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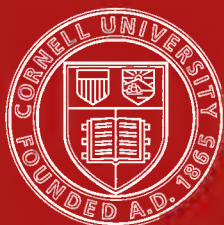
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GENERAL ASSIGNMENTS

FOR BENEFIT OF CREDITORS.

A COMPLETE DIGEST OF DECISIONS;
THE RULES OF PRACTICE
AND STATUTES

OF THE

STATE OF NEW YORK,

WITH FORMS.

BY

JOHN S. DERBY,

OF THE NEW YORK BAR.

SECOND EDITION.

BY

MORRIS COOPER,

OF THE NEW YORK BAR.

NEW YORK:

DIOSSY & COMPANY,

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PREFACE TO FIRST EDITION.

THE appropriateness of the ascription to trusts of a parentage of Fraud and Fear can have no better illustration than is afforded by the origin and growth of general assignments.

This trust had its rise in the fear of attaching creditors and the desire of the insolvent to perpetuate his control over property in his possession,¹ and too often the unmistakable lineaments of the parent Fraud, are discernible.

The general assignment for the benefit of creditors is practically an American device²—the English bankruptcy laws regarding it as an act of bankruptcy, and as such, superseding it by a commission issuing out of the bankrupt court.³

The statutes of the various States contain provisions defining the duty and liability of the assignee and tending to render more simple the process by which he can be compelled to account; such statutory provisions,

¹ Dunham v. Waterman, 17 N. Y. 16.

² Ibid.

³ English Bankrupt Law, 6, § 1.

however, are intended not to embarrass the right to assign, but to simplify the execution of the trust.¹ Several of the States prohibit the creation of preferences and provide for a *pro rata* distribution among creditors, without regard to the form of the assignment.

Originally the assignee took the property assigned as a simple trustee, and as such was answerable to the chancery court for the proper administration of his trust in accordance with the terms of the instrument creating it, and was compellable to account for and distribute the fund by a decree in a creditor's action.

The first attempt at statutory regulation in this State was the Act of 1860, by which it was provided that the assignment should be acknowledged and accorded; that an inventory and schedules should be filed with the county judge; that the assignee should protect the rights of creditors by a bond before he converted the estate, and that the county court should have jurisdiction to compel an accounting, in a summary process similar to that exercised by surrogates in the settlement of estates of deceased persons.

The provisions of this act were extended by frequent amendments, and were finally superseded by the "General Assignment Act of 1877."

The jurisdiction conferred by this act upon county courts is extended to the supreme court by chapter 380 of the Laws of 1885.

The assignee, at first a simple trustee who could be compelled to execute his trust only by the tedious process in chancery, at length became an officer of the county court.

The chancery court, however, is not divested of its

¹ Ludington's Petition, 5 Abb. N. C. 307.

powers, and creditors still have the choice of concurrent remedies.¹

The method of accounting before the referee, to whom, under the statute, the taking and statement of accounts is now entrusted, is the same as the proceeding before a master under the old chancery practice, the 107th Chancery Rule being in no wise inconsistent with the code.² In fact, the Rules of the Common Pleas, so far as they contain any directions in this particular, follow and affirm the chancery practice; as, for example, in the requirements as to the form of the debit and credit statements; the burden of proof in the accounting; the raising of objections by cross examination and the production of vouchers for disbursements.³

A general assignment is an absolute appropriation of all the debtor's property to the payment of his debts, and in the estate so conveyed the assignor has no legal or equitable interest, until the trust has been fully executed;⁴ and the assignee's right to dispose of the property is implied though there be no express provision in the instrument giving that authority.⁵

Any attempt upon the part of the assignor to vest in his trustee a discretion in the method or time of the conversion of the estate is considered as conclusive evidence of a design to hinder and defraud creditors, and

¹ *Schuehle v. Reiman*, 86 N. Y. 270; *Worth v. Bower*, 30 Hun, 151; *Matter of Cromien*, 10 Daly, 41.

² *Wiggin v. Gans*, 4 Sand. 646; *Ketchum v. Clarke*, 22 Barb. 319; *Palmer v. Palmer*, 13 How. 363.

³ *Daniel's Ch. Pr.* 1419.

⁴ *Dunham v. Whitehead*, 21 N. Y. 131; *Ginther v. Richmond*, 18 Hun, 232.

⁵ *Planck v. Schermerhorn*, 3 Barb. Ch. 644; *Cooper v. Whitney* 3 Hill, 95.

will render the instrument void ; and many of the adjudications are upon the validity of assignments where assignors have attempted to enlarge the powers of their trustees to such an extent as to endanger the rights of the *cestuis que trust*.

To the Judges of the Common Pleas whose long and tedious labors have reduced the law of New York to a consistent form ; have defined and limited the powers of the insolvent and his assignee, and have extended to innocent creditors a protection that they did not originally enjoy, is pointedly applicable the apothegm, that

“Juste Lawes are the worke of Juste Judges.”

JOHN S. DERBY.

PREFACE TO SECOND EDITION.

THE favor with which the first edition of this little work was received has induced the publishers to issue a second edition with all the changes in the statutes, and the decisions to date.

MORRIS COOPER.

NEW YORK, October 1, 1898.

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 v. Robertson, 9, 21.

Wilson v. Robinson, 13.
Witmer, Matter of, 69.
Wolf, Matter of, 56, 58, 71.
Woodburn v. Mosher, 2, 9, 10, 11.
Woodworth v. Seymour, 43.
Wooster, Matter of, 67.
Worthy v. Benham, 15.

B

Worthley, Matter of, 56.

Y.

Yates v. Lyon, 3.
Yeager, Matter of, 45, 60.
Young v. Brush, 55.
Younge, Matter of, 67.

ASSIGNMENT FOR BENEFIT OF CREDITORS.

DIGEST OF DECISIONS.*

Right to make general assignment.

Though it act incidentally to hinder and delay creditors, is now beyond question.

- Boardman v. Halliday, 10 Paige, 223.
- MacMenony v. Townsend, 3 Johns. 84.
- Wilkes v. Ferris, 5 Johns. 344.
- Browning v. Hart, 6 Barb. 91.
- Burdick v. Post, 12 Barb. 168.
- Eli v. Cook, 18 Barb. 612.
- Wilson v. Forsyth, 24 Barb. 105.
- Kateltas v. Wilson, 36 Barb. 298.
- McClelland v. Remsen, 36 Barb. 622.
- Auburn Bank v. Fitch, 48 Barb. 344.
- Nicholson v. Leavitt, 6 N. Y. 510.
- Jacobs v. Remsen, 36 N. Y. 669.
- Hauselt v. Vilmar, 76 N. Y. 630.
- Marbury v. Brooks, 6 Wheat. 556.
- Clarke v. White, 12 Peters, 178.
- Tompkins v. Wheeler, 16 Peters, 106.

But *preferential assignments* are regarded with jealousy, and tolerated rather than favored.

- Mead v. Phillips, 1 Sand. Ch. 83.
- Boardman v. Halliday, 10 Paige, 223.
- Grover v. Wakeman, 11 Wend. 187.

* A very valuable note on the general requisites of assignments for the benefit of creditors is given in 9 Pac. Rep. 81, n.

Riggs v. Murray, 2 Johns. Ch. 565.
 Webb v. Daggett, 2 Barb. 9.
 Burdick v. Post, 12 Barb. 168.
 Woodburn v. Mosher, 9 Barb. 255.
 Rathburn v. Platner, 18 Barb. 272.
 McClelland v. Remsen, 36 Barb. 622.
 Wilson v. Ferguson, 10 How. Pr. 175.
 Beste v. Burger, 17 Abb. N. C. 162.

By whom assignment may be made.

Corporation, which may exercise the right to the same extent and in the same manner as natural person in the absence of statutory prohibition.

De Ruyter v. St. Peter's Ch., 3 N. Y. 238.
 Hill v. Reed, 16 Barb. 280.
 Hurlbut v. Carter, 21 Barb. 221.
 Nelson v. Edwards, 40 Barb. 279.
 Huxtun v. Bishop, &c., 3 Wend. 13.
 Bowen v. Lease, 5 Hill, 221.
 Coats v. Donnell, 94 N. Y. 168.

But corporations falling within the Act of 1825, ch. 325, could not assign in contemplation of insolvency.

See 1 R. S. 603, § 4.
 Laws of 1882, c. 402. *1892 C 688*
 Laws of 1882, c. 409, § 1. *See 5th R. S. p 4102. § 48*
 Laws of 1884, c. 434.
 Harris v. Thompson, 15 Barb. 62.
 Loring v. U. S. Gutta Percha Co., 30 Barb. 643.
 Robinson v. Bank, 21 N. Y. 406.
 Dutcher v. Imp. & Traders' B'k, 50 N. Y. 5.
 Paulding v. Chrome Steel Co., 94 N. Y. 334.

Statutory prohibition against preferences does not extend to foreign corporations.

Coats v. Donnell, 94 N. Y. 168.

Partner cannot assign firm property without copartner's consent.

Kemp v. Carnley, 3 Duer, 1.
 Fisher v. Murray, 1 E. D. S. 341.
 Pattee v. Orser, 6 Bosw. 123.
 Havens v. Hussey, 5 Paige, 30.
 Welles v. Marsh, 30 N. Y. 344.
 Adee v. Cornell, 25 Hun, 78.

Wetter v. Schleifer, 6 Abb. Pr. 123.
Kelly v. Baker, 2 Hilt. 531.
Coope v. Bowles, 42 Barb. 87.
Palmer v. Myers, 43 Barb. 509.
Paton v. Wright, 15 How. Pr. 481.
Haggerty v. Granger, 15 How. Pr. 243.
Gates v. Andrews, 37 N. Y. 657.

Consent will be inferred from a clause in the articles of copartnership authorizing one partner to dissolve and close up the firm affairs.

Roberts v. Shepard, 2 Daly, 110.

And from the fact that copartner has absconded or relinquished all control of the property.

Wells v. Marsh, 30 N. Y. 344.
Palmer v. Myers, supra.
Kelly v. Baker, supra.
Baltimore B'k v. Sackett, 2 Daly, 395.
Lowenstein v. Flaurand, 82 N. Y. 494.

The temporary insanity of one partner does not authorize a copartner to make a general assignment for the benefit of creditors.

Stadelman v. Loehr, 47 Hun, 327; s. c., 14 N. Y. State Rep. 247.
Friedburger v. Jaberg, 11 N. Y. State Rep. 718.

Act of one partner may be ratified.

Adee v. Cornell, 93 N. Y. 572.
Coope v. Bowles, 42 Barb. 87.

Such ratification relating back to time of execution.

Sheldon v. Smith, 28 Barb. 593.

An infant may ratify the act of his partner in making assignment.

Yates v. Lyon, 61 N. Y. 344.
 See *Avery v. Fisher*, 28 Hun, 508.

Surviving partner may assign copartnership assets to a firm creditor in payment of a firm debt, though such assignment operates as a preference.

Loeschigk v. Hatfield, 51 N. Y. 660

Palmer v. Myers, 43 Barb. 509.

Cushman v. Addison, 52 N. Y. 628.

As against creditors of the firm the right of a surviving partner to make a general assignment is established.

Williams v. Whedon, 39 Hun, 98.

Bates v. McNulty, 4 N. Y. State Rep. 646.

Nor is it material as against them that such assignment contains preferences.

Id.

But not as against the representatives of the deceased partner.

Nelson v. Tenney, 36 Hun, 327.

May be made with their consent.

Beste v. Burger, 17 Abb. N. C. 162.

Facts from which inference of consent may be drawn.

Id.

After the dissolution of a copartnership, one of the surviving partners cannot, without the consent of the other, assign the copartnership effects to trustees for the benefit of preferred creditors.

Egberts v. Wood, 3 Paige Ch. 517.

General partner in limited partnership may assign.

Hooker v. Argall, 6 Paige, 577.

Robinson v. McIntosh, 3 E. D. S. 221.

An assignment by the general partners of a limited partnership will, under 1 R. S. 766, §§ 20, 21, be invalidated by preferences,

Schwartz v. Soutter, 103 N. Y. 683.

Partner may assign his interest in firm property and the conveyance passes his proportion after payment of firm debts.

Haggerty v. Granger, 15 How. Pr. 243.

Kirby v. Schoonmaker, 3 Barb. Ch. 46.

Menagh v. Whitwell, 52 N. Y. 146.

Partner, to whom the firm property has been transferred upon the dissolution of the partnership, may assign.

Hard v. Milligan, 8 Abb. N. C. 58.

Smith v. Howard, 20 How. Pr. 266.

Dimon v. Hazard, 32 N. Y. 65.

Partnership assignment cannot be made to one of the firm. /

Sewall v. Russell, 2 Paige, 175.

Form of the assignment.

Is not invalidated because made to the assignee, "his successors and assigns."

Hess v. Blakeslee, 2 N. Y. State Rep. 309.

Or because to the assignee, "his heirs, executors, administrators and assigns."

Flagler v. Schoeffel, 40 Hun, 178.

A clause directing the party of the *first* part to take possession, &c., which from the context clearly appears to be a clerical error will not vitiate.

Smith v. Bellows, 3 N. Y. State Rep. 305.

The assignment must be absolute and unconditional, and devote the whole of the assignor's property to the immediate and unqualified payment of his debts, without reservation, or conditions for grantor's benefit.

Burdick v. Post, 12 Barb. 168.

Grover v. Wakeman, 11 Wend. 189.

Should simply vest the debtor's estate in the trustee with directions for its conversion into money and its absolute and unreserved application to the payment of debts, equally or with preferences.

Litchfield v. White, 3 Sandf. 545.

And can contain no provision that shows that assignor intended to prevent the immediate application of property to payment of debts.

Brigham v. Tillinghast, 13 N. Y. 215.

Must fix and determine the rights of creditors without reservation of the power of subsequently so doing.

Averill v. Loucks, 6 Barb. 470.

Haylock v. Coope, 53 N. Y. 68.

Kercheis v. Schloss, 49 How. 284.

Should not assume to restrict or enlarge the legal duties and liabilities of the assignee in the execution of the trust.

Ogden v. Peters, 21 N. Y. 23.

Dunham v. Waterman, 17 N. Y. 9.

It may limit but not increase the legal allowance for compensation to assignee.

Keteltas v. Wilson, 36 Barb. 298.

Preferences must be expressed in the instrument itself.

Frazier v. Truax, 27 Hun, 587.

The recital of a consideration is unnecessary, when it appears that it is the intention to create a statutory trust.

Rockwell v. McGovern, 69 N. Y. 294.

The following provisions have been permitted as not inconsistent with the legal obligations of the assignee.

For the disposition of the assigned property "upon such terms and conditions" as may appear to him most for interest of parties.

Kellogg v. Slawson, 11 N. Y. 302.

For conversion of property "into cash as the same may be conveniently done."

Ogden v. Peters, 21 N. Y. 23.

That assignee forthwith take possession of premises and "sell the same without delay for the best price that can be procured."

Griffith v. Marquardt, 21 N. Y. 121.

Authorizing assignee to sell and dispose of the assigned property "as may be most for advantage of creditors."

Stern v. Fisher, 32 Barb. 198.

Townsend v. Stearns, 32 N. Y. 209.

Or as he may deem most beneficial to interest of creditors.

Halstead v. Gordon, 34 Barb. 422.

Jessup v. Hulse, 21 N. Y. 168.

Or "within such convenient time as to him may deem meet," and convert the estate into money.

Benedict v. Huntington, 32 N. Y. 219.

Whitney v. Krows, 11 Barb. 198.

Nichols v. McEwen, 21 Barb. 65.

Clark v. Fuller, 21 Barb. 128.

Giving authority to assignee to effect insurance and pay interest on outstanding mortgage.

Whitney v. Krows, *supra*.

To employ and pay for all necessary attorney's fees, and to have reasonable compensation for own services.

Jacobs v. Remsen, 36 N. Y. 668.

Van Dine v. Willett, 38 Barb. 319.

Campbell v. Woodworth, 34 Barb. 425.

Butt v. Peck, 7 Daly, 83.

To employ suitable agents.

Mann v. Witbeck, 17 Barb. 388.

To sign the partnership name to checks, drafts, &c., when necessary to carry into effect the object and purpose of the trust.

Beste v. Burger, 17 Abb. N. C. 162.

To receive lawful compensation.

Halstead v. Gordon, 34 Barb. 422.

To manage and improve property heavily incumbered by mortgage.

Hitchcock v. Cadmus, 2 Barb. 381.

To collect choses in action and compromise with debtors.

- Coyne v. Weaver, 84 N. Y. 386.
 McConnell v. Sherwood, 84 N. Y. 522.
 Bellows v. Partridge, 19 Barb. 176.
 Dow v. Platner, 16 N. Y. 562.
 Bagley v. Bowe, 105 N. Y. 171.

May contain a prohibition of a sale on credit.

- Carpenter v. Underwood, 19 N. Y. 520.
 Grant v. Chapman, 33 N. Y. 293.
 Van Rossum v. Walker, 11 Barb. 237.

As indicating an intent to exercise over the property a control inconsistent with the purposes for which a general assignment is upheld, the following provisions will not be permitted.

Exemption of assignee from liability to loss except by gross negligence.

- Littlefield v. White, 7 N. Y. 438.
 Olmstead v. Herrick, 1 E. D. S. 310.
 Jacobs v. Allen, 18 Barb. 495.

Authorization to assignee to change the order of preferences.

- Strong v. Skinner, 4 Barb. 546.
 Barnum v. Hempstead, 7 Paige, 568.
 Boardman v. Halliday, 10 Paige, 223.

The assignment, however, need not indicate the order in which the preferences are to be paid.

- Friend v. Michaelis, 15 Abb. N. C. 354.

And reservation to assignor of power to give future preferences.

- Averill v. Loucks, 6 Barb. 470.
 Hyslop v. Clarke, 14 Johns. 458.
 Grover v. Wakeman, 4 Paige, 24.
 Barnum v. Hempstead, 7 Paige, 571.
 Sheldon v. Dodge, 4 Den. 217.
 Strong v. Skinner, 4 Barb. 546.
 Kercheis v. Schloss, 49 How. 284.
 Frazier v. Truax, 27 Hun, 587.

Authorizing sale of assigned property on credit.

- Porter v. Williams, 9 N. Y. 142.

Kellogg v. Slauson, 11 N. Y. 302.
 Wilson v. Robertson, 21 N. Y. 587.
 Barney v. Griffin, 2 Comst. 365.
 Whitney v. Krows, 11 Barb. 198.
 Burdock v. Post, 12 Barb. 168.
 D'Ivernois v. Leavitt, 23 Barb. 63.
 Gates v. Andrews, 37 N. Y. 657.
 Bagley v. Bowe, 105 N. Y. 171.

Authority to convert into money "or available means" is equivalent to authority to sell on credit.

Brigham v. Tillinghast, 13 N. Y. 215.

So, provision that property "be converted into cash or otherwise disposed of."

Rapelee v. Stewart, 27 N. Y. 310.

Or, that assignee "in his discretion for such consideration in money or other things," &c., may dispose of assets.

Bagley v. Bowe, 105 N. Y. 171.

To convert property in a convenient time as "shall seem meet."

Woodburn v. Mosher, 9 Barb. 255.

Authorizing assignee to withhold distribution of estate as he thinks proper.

D'Ivernois v. Leavitt, 23 Barb. 63. }

Leaving the duty of converting and distributing the assets to the discretion of the assignee in such a way as to take the same from the supervision of the courts.

Robbins v. Butcher, 104 N. Y. 575.

Contra, if the discretion conferred does not contemplate a withdrawal of the supervision exercised by the courts over the same.

Robbins v. Butcher, 104 N. Y. 575.

Authorizing assignee to complete certain machinery embraced in transfer.

Dunham v. Waterman, 17 N. Y. 9.

To complete unfinished work, and pay the expenses therefor.

Watson v. Brown, 15. Abb. N. C. 412.

To "manage and improve" estate.

Schlüssel *v.* Willett, 34 Barb. 615.

To carry on the business of assignor.

Reuton *v.* Kelly, 49 Barb. 536.

Giving authority to compromise with creditors.

McConnell *v.* Sherwood, 84 N. Y. 522.

Woodburn *v.* Mosher, 9 Barb. 155.

Grover *v.* Wakeman, 11 Wend. 187.

Reserving power of revocation.

Murray *v.* Riggs, 15 Johns. 571.

Giving power to mortgage assigned property.

Planck *v.* Schermerhorn, 3 Barb. Ch. 644.

Darling *v.* Rogers, 22 Wend. 483.

Reichenbach *v.* Winkhaus, 67 How. Pr. 512.

Giving "reasonable counsel fee" to assignee.

Nichols *v.* McEwen, 21 Barb. 65.

Reserving to assignor some pecuniary benefit out of estate before *all* the debts are paid.

Grover *v.* Wakeman, 11 Wend. 201.

Goodrich *v.* Downs, 6 Hill, 438.

Strong *v.* Skinner, 4 Barb. 546.

Doremus *v.* Lewis, 8 Barb. 124.

Jackson *v.* Parker, 9 Cow. 73.

Nicholson *v.* Leavitt, 4 Sandf. 252.

Hyslop *v.* Clarke, 14 Johns. 458.

Mackie *v.* Cairns, 5 Cow. 549.

McClelland *v.* Remsen, 36 Barb. 622.

Barney *v.* Griffin, 2 N. Y. 365.

Leitch *v.* Hollister, 4 N. Y. 211.

Collum *v.* Caldwell, 16 N. Y. 484.

Haydock *v.* Coope, 53 N. Y. 68.

Sutherland *v.* Brauner, 39 Hun, 134.

Requiring release from creditors as a condition to participation in the estate.

Powers *v.* Graydon, 10 Bosw. 630.

Berry *v.* Riley, 2 Barb. 307.
 Hyslop *v.* Clarke, 14 Johns. 458.
 Austin *v.* Bell, 20 Johns. 442.
 Wakeman *v.* Grover, 4 Paige, 23.
 Woodburn *v.* Mosher, 9 Barb. 255.
 Spaulding *v.* Strang, 36 Barb. 310.
 Hastings *v.* Belknap, 1 Denio, 190.

Preferences that it may create.

For payment of usurious debt.

Murray *v.* Judson, 9 N. Y. 73.
Contra, Chandler *v.* Powers, 9 N. Y. State Rep. 169.

Debt due accommodation creditors.

Spaulding *v.* Strang, 37 N. Y. 135.

For payment of creditors who had *previously* executed a release for a percentage, to the amount of such percentage.

Spaulding *v.* Strong, *supra*.
 Low *v.* Graydon, 50 Barb. 414.

For amount that may be found due to sheriff on attachment.

Grant *v.* Chapman, 38 N. Y. 293.

To pay laborers "residing in specified cities the amounts due them."

Silver Creek Bk. *v.* Talcott, 22 Barb. 550.

All persons who had "become bail or surety" for assignor.

Keteltas *v.* Wilson, 36 Barb. 298.
 Hendricks *v.* Walden, 17 Johns. 438.
 Lansing *v.* Woodworth, 1 Sandf. Ch. 43.

Debt due assignor's wife for money loaned.

Jaycox *v.* Caldwell, 51 N. Y. 295.
 McCartney *v.* Welsh, 51 N. Y. 626.
 Magniac *v.* Thompson, 7 Peters, 348.

To persons holding claims purchased at a great discount.

Low *v.* Graydon, 50 Barb. 414.
 Powers *v.* Graydon, 10 Bosw. 630.

Debts that have been previously secured, though the creditors must first resort to their security.

Besley v. Lawrence, 11 Paige, 581.

Dimon v. Delmonico, 35 Barb. 554.

The preference for a larger sum than is actually due a creditor is not of itself sufficient to avoid an assignment, but must be supplemented by proof that such increase was intentional.

Brown v. Halsted, 17 Abb. N. C. 197.

Assignment by Partnership.

Must be executed by all the partners except where authority for the execution is given one of the members of the firm.

Cases cited *ante*, pages 2. and 3.

The execution and acknowledgment of an assignment of the firm property by one partner is sufficient where the other partner has authorized the assignment, and the partner executing it does so in the firm name.

Klump v. Gardener, 15 N. Y. State Rep. 100.

An assignment executed by a firm will be construed as passing only partnership property, where, from the terms used therein and the circumstances attending the same, no intention reasonably appears to include the individual property of assignors.

Matter of Davis, 1 How. Pr. N. S. 79.

An assignment for the benefit of creditors executed by a firm, reciting that the parties of the first part are indebted, &c., and conveying all their property upon the usual trust, and to pay all the private and individual debts of said copartners, conveys the individual as well as the partnership property of the assignors.

Becker v. Leonard, 42 Hun, 221.

Must apply firm property to payment of firm debts.

Nicholson v. Leavitt, 4 Sandf. 252.

Merrill v. Neill, 8 How. 414.

Bogert v. Haight, 9 Paige, 296.

Scott v. Guthrie, 25 How. Pr. 512.

An assignment by the firm of firm property for the payment of firm and individual debts without provision that the firm debts be first paid, justifies an inference that the assignors are disposing of their property with intent to delay and defraud creditors within § 636, Code Civ. Pro.

Friend v. Michaelis, 15 Abb. N. C. 354.

The duty of a firm making an assignment for benefit of creditors, is to assign its firm property to pay its firm creditors other than its own members.

First Nat'l Bank v. Wood, 45 Hun, 411.

But the objection can only be raised by copartnership creditors, prosecuting and seeking redress as such.

Haynes v. Brooks, 8 Civ. Pro. 106 ; s. c., 17 Abb. N. C. 152.

Cannot prefer individual debt, to be paid out of firm property.

Jackson v. Cornell, 1 Sandf. Ch. 46.

Egbert v. Woods, 3 Paige, 517.

Leslie v. Wallack, 3 Rob. 691.

Welsh v. Kelley, 42 Barb. 98.

Wilson v. Robinson, 21 N. Y. 587.

Heye v. Bolles, 2 Daly, 231.

Matter of Schiele, 10 Daly, 92.

Fourth Nat'l. Bank v. Burger, 15 N. Y. State Rep. 103.

Except when such debt has been assumed by the firm.

Turner v. Jaycox, 40 N. Y. 471.

Or when the preferred debt is by a firm composed of a portion of the members of the firm assigning.

Peckham v. Mattison, 15 Abb. N. C. 367, n.

Though such preference, if made innocently and by mistake, will not avoid the instrument.

Cox v. Platt, 32 Barb. 126.

A joint note does not constitute a partnership debt.

Turner v. Jaycox, 40 N. Y. 471.

A surviving partner may in an assignment include therein the property of the preceding firm.

Haynes v. Brooks, 42 Hun, 528.

A direction in such assignment, that the assignee not only pay the debts owing by the said firm, but also the debts against the assignor as the survivor of said firm, is a sufficient direction to pay his individual debts.

Id. {

Where an assignment of both individual and firm property prefers an individual debt it is not void on its face; but the burden rests on the assignee to show that the individual property was sufficient to pay the individual debts.

Knauth v. Bassett, 34 Barb. 31.

A partnership assignment which only shows insolvency of firm creates no presumption of individual insolvency.

Turner v. Jaycox, 40 Barb. 164.

But one member of partnership may prefer partnership debt out of individual property.

Kirby v. Schoonmaker, 3 Barb. Ch. 46.

Van Rossum v. Walker, 11 Barb. 237.

O'Neil v. Salmon, 25 How. Pr. 246.

Such provision is no fraud upon individual creditors.

Haynes v. Brooks, 8 Civ. Pro. 106; s. c., 17 Abb. N. C. 152; 42 Hun, 528.

Becker v. Leonard, 42 Hun, 221.

Smith v. Perine, 17 N. Y. State Rep. 226.

A partnership assignment which provides for the payment of firm debts, and, from the surplus, the individual debts *pro rata*, is bad if the individual debts of the parties are unequal.

Crook v. Rindskopf, 21 Week. Dig. 30; s. c., 34 Hun, 457.

An assignment by a firm which prefers a part of their partnership debts, and after the payment of the preferences and the residue of the firm liabilities, directs the surplus found in favor of each partner to be applied in payment of his individual debts,

either in full or *pro rata*, as the surplus shall prove to be adequate for the purpose; and after the payment of such debts in full, the remaining surplus to be returned to assignors, is valid.

Vietor v. Nichols, 13 N. Y. State Rep. 461.

Time assignment takes effect.

Is upon its delivery, and it is not invalidated by non-compliance with requirements subsequent thereto, such as filing bond, schedules, &c.

Warner v. Jaffrey, 96 N. Y. 248.

Juliand v. Rathbone, 39 Barb. 97.

Van Vleet v. Slauson, 45 Barb. 317.

Syracuse, &c. v. Collins, 57 N. Y. 641.

Thrasher v. Bently, 59 N. Y. 649.

Brennan v. Willson, 71 N. Y. 502.

Bostwick v. Burnett, 74 N. Y. 317.

Matter of Farnam, 75 N. Y. 187.

Produce Bank v. Morton, 67 N. Y. 199.

Mathews v. Poultney, 33 Barb. 127.

Smith v. Newell, 32 Hun, 501.

Worthy v. Benham, 4 Abb. N. C. 170.

Nicoll v. Spowers, 105 N. Y. 1.

McMahon v. Sherman, 14 N. Y. State Rep. 637.

Phillips v. Tucker, 28 Week. Dig. 227; s. c., 14 N. Y. State Rep. 120.

McBlain v. Speelman, 35 Hun, 263; rev'g 6 Civ. Pro. (Browne), 401.

Crisfield v. Bogardus, 18 Abb. N. C. 334.

When once executed it cannot be changed by subsequent assignment.

Metcalf v. Van Brunt, 37 Barb. 621.

And if void in its inception it cannot be rendered valid by subsequent act.

Averill v. Loucks, 6 Barb. 471.

Is revocable between the parties, but revocation cannot impair rights of creditors.

Whitcomb v. Fowle, 10 Daly, 23.

An assignment made and recorded after verdict against the assignor, and before entry of judgment, takes precedence of the judgment.

Waterbury v. Sturtevant, 18 Wend. 353.

When necessary to secure the fund for distribution among the creditors, the equitable doctrine of relation may be invoked to cover the interval elapsing between the delivery of an assignment and the recording thereof in the proper county.

Nicoll v. Spowers, 105 N. Y. 1.

Where a judgment creditor's lien attaches to the property of an assignor subsequent to the making of a fraudulent assignment for the benefit of creditors, a new general assignment will not destroy such creditor's lien.

Sutherland v. Bradner, 39 Hun, 134.

Property that passes to Assignee.

Assignee takes, not as a purchaser for value, but subject to equities that existed against assignor.

Van Heusen v. Radcliff, 17 N. Y. 580.

Rust v. Lathrop, 22 N. Y. 535.

Marine Bank v. Jauncey, 1 Barb. 486.

Warren v. Fenn, 28 Barb. 338.

Reed v. Sands, 37 Barb. 185.

The right of the vendor to rescind a sale for fraud and to recover the goods sold, is not divested by the fraudulent vendors making a general assignment, and may be exercised against the assignee.

Goodwin v. Wertheimer, 99 N. Y. 149.

The proceeds of sales of goods sent to the assignors on consignment and improperly mixed by the assignors with their own funds, may be recovered from the assignee.

Standard Wagon Co. v. Nichols, 41 Hun, 261.

The rule, that trust property may be followed and recovered, against a wrong-doer, through all its changes, only so long as it can be identified and ascertained, applied as against a claim for moneys entrusted to an assignor, before making a general assignment, for the specific purpose of investing on bond and mortgage, but which he wrongfully mixed with his own funds and misappropriated.

Matter of Cavin, 105 N. Y. 256.

The assignee gets no title to negotiable bonds left with assignor as security for the purchase of stock on margin.

Matter of Connor, 24 Week. Dig. 217; aff'g Matter of Smyth, 2 How. Pr. N. S. 431.

Personal property levied upon passes subject to lien.

Mumper v. Rushmore, 79 N. Y. 19.

Albert v. Back, 52 Super. (J. & S.) 550.

And realty, subject to vendor's equitable lien for purchase money.

Warren v. Fenn, 28 Barb. 333.

The rule that in equity real estate purchased with copartnership funds is to be regarded as copartnership assets, applied to an assignment made by a surviving partner.

Haynes v. Brooks, 8 Civ. Pro. 106 ; s. c., 17 Abb. N. C. 152.

All property of an assignable nature passes, whether included in the schedule or not.

Platt v. Lott, 17 N. Y. 478.

Turner v. Jaycox, 40 N. Y. 471.

Right of action for conversion of personal property.

McQueen v. Babcock, 41 Barb. 337.

Sherman v. Elder, 24 N. Y. 381.

Richtmeyer v. Remsen, 38 N. Y. 206.

Goods in transit, subject to vendor's right of stoppage.

Van Dine v. Willett, 38 Barb. 319.

Lasker v. Rhoades, 51 N. Y. 641.

Trade-mark passes under assignment.

Matter of Knox, 1 Mon. L. B. 47.

Hegeman v. Hegeman, 8 Daly, 6.

Milliken v. Dart, 26 Hun, 24.

Assignment of real estate, with leases, reservations, rents,

and debts due, passes to assignee the covenants, conditions, and right of entry contained in lease.

Main v. Green, 32 Barb. 448.

Undertaking in replevin passes.

Coffin v. McLean, 80 N. Y. 560.

Title to moneys and evidences of debt belonging to assignor.

Nassau Bank v. Yandes, 44 Hun, 55.

A promissory note given to indemnify a trustee against loss.

Brown v. Pease, 6 N. Y. State Rep. 191.

Where an assignor has, with the consent of the seller and before acquiring title thereto, rescinded its purchase of goods before an assignment, the goods will not pass to the assignee.

Flynn v. Ledger, 48 Hun, 465.

Proceeds of sale by assignee, of assigned property, not subject to levy under attachment against assignors.

McAllister v. Bailey, 16 N. Y. State Rep. 484.

A mortgagor of chattels has an assignable interest in the property, which passes subject to the payment of liens.

Sullivan v. Miller, 27 Week. Dig. 295.

The right which an assignor has to discharge the trust by payment of the debts before the sale by the assignee, and to declare to whom lands held in trust shall belong on the termination of the trust, and his right to grant or devise the land subject to the execution of the trust, are mere equities, which do not impair or diminish the estate of the assignee. The same remains perfect and exclusive until the purposes of the trust have in fact been accomplished.

People ex rel. Short v. Bacon, 99 N. Y. 275; aff'g 19 Week. Dig. 129.

Duties and liabilities of assignee.

The assignment is the guide and measure of his duty, and he is limited by the terms of his trust.

Matter of Lewis, 81 N. Y. 421.

Pratt v. Adams, 7 Paige, 615.

Green v. Morse, 4 Barb. 332.

Is bound to use the care and diligence of a provident man.

Litchfield v. White, 7 N. Y. 438.

Matter of Dean, 86 N. Y. 398.

Matter of Edwards, 10 Daly, 68.

Where he is responsible individually for a debt, he should, although the debt was contracted for the benefit of the assigned estate, be sued in his individual capacity therefor.

Singer v. Hardy, 2 City Ct. 223.

Takes property subject to the equities that existed against his assignor.

Cases cited, *ante*, page 16.

He may employ suitable agents to aid in the administration of the trust.

Mann v. Whitbeck, 17 Barb. 388.

Van Dine v. Willett, 38 Barb. 319.

But cannot delegate his powers by conveyance to another to act in accordance with the terms of assignment.

Small v. Ludlow, 1 Hilt. 189.

Cannot be compelled to fulfill an unperformed contract of the assignor.

Matter of Adams, 15 Abb. N. C. 61.

Nor to give a preference to a debt not preferred in the assignment.

Matter of Lewis, 81 N. Y. 421.

Not to purchase at sales of assigned estate except in strong case.

Matter of Black, 13 Daly, 21

Cannot be imprisoned for contempt in neglecting to pay over moneys due estate.

Matter of Hess, 48 Hun, 586.

Ch. 545, L. 1875, establishing a limitation period of twenty-five years in respect to estates conveyed to trustees for benefit of creditors, is as applicable to past assignments as to assignments made after the passage of the act.

Kip v. Hirsh, 103 N. Y. 565; s. c., 18 Abb. N. C. 167.

May upon his own motion investigate the correctness of sums directed to be paid preferred creditors.

Brown v. Halsted, 17 Abb. N. C. 197.

He can be relieved of his trust, after acceptance, only by order of court.

Brennan v. Willson, 71 N. Y. 502.

Is liable for rent of premises if he accept lease.

Journey v. Brackley, 1 Hilt. 447.

But not personally, for rent which became due before he entered the premises.

Pilzemayer v. Walsh, 2 City Ct. 244.

But may accept or reject lease in his discretion.

Dennistown v. Hubbell, 10 Bosw. 155.

Jones v. Hausmann, Id. 168.

Carter v. Hammett, 12 Barb. 253.

Joint assignees must unite in a transfer, and a deed by one is invalid.

Ridgely v. Johnson, 11 Barb. 527.

Brennan v. Willson, 71 N. Y. 502.

Only those of joint assignees who accept the trust can act.

Mair v. Brown, 14 Barb. 39.

Creditors of the assignor should not be permitted to intervene in actions against the assignee to recover property claimed by the latter by virtue of the assignment, unless there is something to show misconduct or dereliction of duty on the part of the assignee.

Davies v. Fish, 47 Hun, 314.

Act of 1858, ch. 314, gives assignee a right to treat as void a fraudulent transfer. Under this act he has the same right to defend against a transfer as has a creditor who has a lien.

Ball v. Slaften, 98 N. Y. 622; aff'g 26 Hun, 353.

May attack a transfer of goods in storehouse to secure moneys loaned, given by assignor.

Niagara Bank v. Lord, 33 Hun, 557.

The assignee cannot, under said statute, take advantage of the failure in good faith of a chattel mortgagee to file his mortgage, honestly executed before the assignment.

Dorothy v. Scrvis, 46 Hun, 628; s. c., 13 N. Y. State Rep. 1.

Crisfield v. Bogardus, 18 Abb. N. C. 334.

Facts upon which mortgages, given by the assignor shortly before making an assignment for benefit of creditors, were sustained.

Smith v. Perine, 17 N. Y. State Rep. 226.

Construction of instrument.

Must be upheld where the language admits of an interpretation in accordance with settled principles of law.

Bogart v. Haight, 9 Paige, 297.

Silver Creek Bank v. Talcott, 22 Barb. 550.

Turner v. Jaycox, 40 Barb. 164.

Bingham v. Tillinghast, 15 Barb. 618.

Jessup v. Hulse, 21 N. Y. 168.

Brainard v. Dunning, 30 N. Y. 211.

Townsend v. Stearns, 32 N. Y. 209.

Benedict v. Huntington, 32 N. Y. 219.

Will not be construed as authorizing a sale on credit where its terms may be otherwise construed.

Wilson v. Robertson, 21 N. Y. 587.

General words in assignment restricted by subsequent clause referring to schedule.

Holmes v. Hubbard, 60 N. Y. 183.

This rule is subordinate, however, to more general rule

requiring all instruments to be so construed as to give effect to intention of parties.

Emigrant Savings Bank v. Roche, 93 N. Y. 374.

Burden is upon the party who seeks to avoid the instrument to show its illegality.

Lee's Bank v. Talcott, 19 N. Y. 146.

Townsend v. Stearns, 52 N. Y. 209.

Schultz v. Hoagland, 85 N. Y. 464.

By whom and how assignment may be assailed.

By sheriff, as a defense to an action by assignee for conversion, when property has been attached and taken into his possession.

Jacobs v. Remsen, 34 Barb. 384.

Kelly v. Lane, 42 Barb. 694.

Carr v. Van Hoesen, 26 Hun, 316.

Hall v. Stryker, 27 N. Y. 596.

Rinchey v. Stryker, 31 N. Y. 140.

Jacobs v. Remsen, 36 N. Y. 668.

Frost v. Mott, 34 N. Y. 253.

But sheriff cannot maintain an action to set aside.

Thurber v. Blanck, 50 N. Y. 80.

Grady v. Bowe, 16 Weekly Dig. 136.

Bowe v. Arnold, 31 Hun, 256.

Lawrence v. Bank, &c., 35 N. Y. 320.

Castle v. Lewis, 78 N. Y. 131.

Nassau Bank v. Yandes, 44 Hun, 55.

While a creditor at large cannot maintain an action for the purpose of setting aside an assignment as fraudulent against creditors, yet, where such creditor, by attachment, causes property to be taken by the sheriff thereunder, the latter may defend an action of trespass upon the ground that the property had been transferred by the defendants in the attachment suit in fraud of creditors.

Webster v. Lawrence, 15 N. Y. State Rep. 140.

Levy can only be made upon the property itself on the ground of a fraudulent assignment—not upon the proceeds of the property.

Matter of Foley, 10 Daly, 4.
 Citing, Laming v. Streeter, 57 Barb. 33.
 Campbell v. Erie R. R., 46 Barb. 540.
 Greenleaf v. Mumford, 50 Barb. 543.
 Lawrence v. Bk. Republic, 35 N. Y. 320.

By judgment creditor, by an action in aid of execution which has been levied upon debtors' property.

Beck v. Burdett, 1 Paige, 305.
 Payne v. Sheldon, 63 Barb. 169.
 Shaw v. Dwight, 27 N. Y. 253.
 Fox v. Moyer, 54 N. Y. 125.
 Neustadt v. Joel, 2 Duer, 532.

By judgment creditor, under section 1871 of the Code of Civil Procedure.

Action must be by a *judgment* creditor, after execution has been returned unsatisfied.

Cropsey v. McKenney, 30 Barb. 47.
 Coope v. Bowles, 42 Barb. 87.
 Knauth v. Bassett, 34 Barb. 31.
 Wilson v. Forsyth, 24 Barb. 105.
 Willett v. Vandemburgh, 34 Barb. 424.
 Renand v. O'Brien, 35 N. Y. 99.
 Forbes v. Waller, 25 N. Y. 430.
 Sullivan v. Miller, 27 Week. Dig. 295.

A judgment creditor's action to set aside an assignment cannot be brought after the funds arising from a sale of the assigned estate have been distributed under a decree of the county court and the assignee discharged.

McLean v. Prentice, 34 Hun, 504.

The mere fact that a creditor has presented proof of his indebtedness under the assignment does not preclude him from asserting its legal invalidity. It is only where he has derived some benefit from or through the assignment that he is estopped.

Talcott v. Hess, 4 N. Y. State Rep. 62.

The rule that a party accepting the benefit of an assignment cannot attack the same unless it appears that such acceptance was made in ignorance of facts which, if known, would have

justified the granting of relief, applied as against judgment creditors who, after signifying their acquiescence, brought an action to set aside an assignment.

Levy v. James, 16 N. Y. State Rep. 762.

A proof of debt to which the creditor attaches a statement that he thereby does not waive any rights which he may have acquired under an attachment, and that he does not in any manner recognize the validity of the general assignment, does not estop the creditor from opposing the assignment.

Iselin v. Henlein, 16 Abb. N. C. 73.

An election clearly and unequivocally made by a creditor of the assignor to sustain the assignment and to take benefits thereunder, with knowledge on his part that it is impeachable in a court of equity for fraud, is final and conclusive upon the creditor.

Id.

A creditor with full knowledge of fraud in fact, in the execution and delivery of a voluntary assignment, may elect to waive the fraud. In such case he cannot afterwards, by action in a court, move in hostility to the assignment and seek to set it aside as fraudulent against creditors.

Id.

A creditor who aids the assignors to make a fraudulent assignment, by which he reaps advantages denied to other creditors, cannot attack the assignment.

Matter of Davis, 1 How. Pr. N. S. 79.

The objection that an assignment executed by a surviving partner is fraudulent as against partnership creditors, can only be raised by the latter or by the personal representatives of the deceased partner.

Haynes v. Brooks, 8 Civ. Pro. 106; s. c., 17 Abb. N. C. 152.

An action to reform an assignment, by a firm in which a preference has been created, in favor of an individual debt, can-

not be maintained unless all the parties to the assignment were mistaken in regard to its contents.

Fourth Nat. Bank v. Burger, 15 N. Y. State Rep. 101.

Action may be brought by creditors who seek to avoid assignment, without making other creditors parties.

Russell v. Lasher, 4 Barb. 232.

Bank v. Suydam, 6 How. Pr. 379.

Assignor is a necessary party.

Lawrence v. Bk. Republic, 35 N. Y. 320.

An assignment by which a third party is to be paid a certain share of the profits accruing to one of the partners in a firm, does not make such third party a partner, nor give his creditors an interest in the firm property which can be reached before the firm debts have been satisfied.

Rockafellow v. Miller, 107 N. Y. 507.

Action to avoid assignment will not lie on the ground that assignor fraudulently withheld property—no collusion on assignee's part being shown.

Miller v. Halsey, 4 Abb. Pr. N. S. 28.

Evidence tending to avoid assignment.

Provisions in an assignment which must necessarily have the effect of hindering, delaying, or defrauding creditors, afford conclusive evidence of fraudulent intent.

Kavanagh v. Beckwith, 44 Barb. 192.

Cunningham v. Freeborn, 11 Wend. 240.

Griffin v. Murquardt, 21 N. Y. 121.

Coleman v. Burr, 93 N. Y. 31.

Friend v. Michaelis, 15 Abb. N. C. 354.

But the mere fact that an assignment for the benefit of creditors is void, forms no basis for an attachment against the property of the assignors, under section 636 Code Civ. Pro.

Id.

So extrinsic facts admitted or undisputed will raise a conclusive presumption.

Kavanagh v. Beckwith, 44 Barb. 192.
Reichenbach v. Winkhaus, 67 How. Pr. 512.

The intent of the assignor at the time of execution is the material consideration in determining validity,

Wilson v. Forsyth, 24 Barb. 105.
Mathews v. Poultney, 33 Barb. 127.
Schultz v. Hoagland, 85 N. Y. 464.
Talcott v. Hess, 31 Hun, 282.
Phillips v. Tucker, 14 N. Y. State Rep. 120; s. c.,
 28 Week. Dig. 227.

And if executed with fraudulent intent by assignor, the assignment will be void, though assignee acted in good faith.

Rathburn v. Platner, 18 Barb. 272.
Putnam v. Hubbell, 42 N. Y. 106.

Acts and declarations of assignor at the time, or in contemplation of making assignment, are evidence of intent.

Peck v. Crouse, 46 Barb. 151.

Dealings with a preferred creditor are admissible in evidence.

Chandler v. Powers, 9 N. Y. State Rep'r, 169.

Or before parting with and while in possession of the property.

Newlin v. Lyon, 49 N. Y. 661.
Tilson v. Terwilliger, 56 N. Y. 273.

In inquiring into such acts, the law gives the greatest latitude.

Wilson v. Forsyth, 24 Barb. 105.

But declarations subsequent to execution of instrument and after parting with possession are not admissible.

Ogden v. Peters, 15 Barb. 560.
Peck v. Crouse, 46 Barb. 151.
Cuyler v. McCartney, 40 N. Y. 221.
Coyne v. Weaver, 84 N. Y. 386.

Nor that a provision which would have validated an assignment was omitted by mistake, when plaintiff's are not parties to the instrument.

Sutherland v. Bradner, 39 Hun, 134.

In respect to frauds extrinsic of the instrument of assignment the burden of proving the fraudulent intent is on the plaintiff.

Dimick v. Marks, Daily Register, March 18, 1886.

That assignor's conduct was so equivocal as to leave the mind in doubt as to his motives and fill it with suspicion, is not enough.

Id.

While a fraudulent intent is to be inferred from acts necessarily culminating in a fraud upon the rights of creditors, the inference should not be drawn unless that result is clearly deducible.

Brown v. Halsted, 17 Abb. N. C. 197.

Nor subsequent fraudulent acts of parties.

Browning v. Hart, 6 Barb. 91.

Shultz v. Hoagland, 85 N. Y. 464.

Cuyler v. McCartney, 40 N. Y. 221.

The assignor may testify to his intent.

Mathews v. Poultney, 33 Barb. 127.

Seymour v. Wilson, 14 N. Y. 567.

Bedell v. Chase, 34 N. Y. 386.

Among the facts not apparent upon the face of the instrument which have been held as affording evidence of fraudulent intent are the following :

Retention of possession by the assignor.

Connell v. Sedgwick, 1 Barb. 210.

Cram v. Mitchell, 1 Sandf. Ch. 251.

Wilson v. Forsyth, 24 Barb. 105.

Mathews v. Poultney, *supra*.

Pine v. Rickert, 21 Barb. 496.

Dolson v. Kerr, 5 Hun, 643.

Ball v. Loomis, 29 N. Y. 412.

Iselin v. Henlein, 16 Abb. N. C. 73.

Giving preference to, and providing for the payment of, fictitious debts.

Sheldon v. Dodge, 4 Den. 217.

Brainard v. Dunning, 30 N. Y. 211.
Jacobs v. Remsen, 36 N. Y. 668.
Bostwick v. Mench, 40 N. Y. 383.
First Nat'l Bank of Westport v. Raymond, 14 N. Y.
State Rep'r, 868.

An agreement to prefer the debt of a certain creditor in case of an assignment, renders an assignment containing such preference void.

Nat. Park Bank v. Whitmore, 40 Hun, 499.

A suspicion of preferences for fictitious debts is insufficient. It must appear that the fictitious claims were intentionally inserted.

Sloan v. Gauhn, 27 Week. Dig. 553; 12 N. Y. State Rep. 717.

Inserting in the schedules claims in favor of friends that have been paid.

Talcott v. Hess, 31 Hun, 282.

Schedules, if made by assignor, may be treated as within his contemplation when making the assignment.

Phillips v. Tucker, 14 N. Y. State Rep'r, 120.

Contra, if prepared by the assignee.

Denton v. Merrill, 43 Hun, 224.

Omission of schedules referred to as annexed.

Birchell v. Strauss, 28 Barb. 293.

Omission of assets therefrom.

Schultz v. Hoagland, 85 N. Y. 464.
Friedburger v. Jaberg, 14 N. Y. State Rep. 718.

But not where the parties honestly believe that by the law of a foreign state in which such assets are situated, the same do not pass under the assignment.

Eastern Nat'l Bank v. Hulshizer, 2 N. Y. State Rep. 93.
Blain v. Pool, 13 N. Y. State Rep. 571.

Constituting assignor agent to transact the business of the estate.

Nicholson v. Leavitt, 4 Sandf. 252.
Wilbur v. Fradenburgh, 52 Barb. 473.
Browning v. Hart, 6 Barb. 91.
Victor v. Nichols, 13 N. Y. State Rep. 461.

Selection of an insolvent person as assignee.

Connah v. Sedgwick, 1 Barb. 210.
Haggerty v. Pittman, 1 Paige, 298.
Reed v. Emery, 8 Paige, 417.
Contra, *Friend v. Michaelis*, 15 Abb. N. C. 354.

Or of one whose ill-health or residence renders him unable to properly fulfill the duties of the trust.

Cram v. Mitchell, 1 Sandf. Ch. 251.
Currie v. Hart, 2 Sandf. Ch. 353.

A reservation by assignor of the power to revoke.

Reichenbach v. Winkhaus, 67 How. Pr. 512.

The facts that the assets are clearly in excess of debts.

Livermore v. Northrup, 44 N. Y. 107.

In the absence of heavy or serious losses, a very rapid shrinkage of firm assets preceding the assignment.

Victor v. Nichols, 13 N. Y. State Rep^r, 461.

Large sales at auction by the assignor, of his stock, at great sacrifice, and the failure to enter proceeds thereof.

Dimick v. Marks, Daily Register, March 18, 1886.

The mere withdrawal of money from assignor's assets not of itself sufficient to vitiate assignment, unless done intentionally to defraud.

Sloan v. Gauhn, 27 Week. Dig. 553; s. c., 12 N. Y. State Rep^r, 717.
Friend v. Michaelis, 15 Abb. N. C. 354.
Victor v. Nichols, 13 N. Y. State Rep^r, 461

Small amounts of money taken immediately preceding an

assignment by assignors, for future support of their families, sustained under Code Civ. Pro., § 1390 and subd. 4, § 2463.

Id.

Facts held not to constitute an acquiescence by creditors in the withdrawal of moneys by the assignors.

Iselin v. Henlein, 16 Abb. N. C. 73.

The transfer of valuable merchandise by a partner to the assignee before an assignment by the firm, solely executed by such copartner, the assignee being the individual creditor of the partner, sufficient to set aside assignment.

Friedburger v. Jaberg, 11 N. Y. State Rep'r, 718.

Facts attending transfer of real estate by assignor justifying an inference of fraud.

First Nat'l Bank of Westport v. Raymond, 14 N. Y. State Rep'r, 868.

The fact that prior to the making of an assignment, accounts are from time to time conveyed as security to a preferred creditor, does not of itself vitiate the assignment, since such preferred debt would have to be reduced to the extent of realizing from the securities.

Blair v. Pool, 13 N. Y. State Rep'r, 571.

Foreign Assignments.

A transfer of personal property is governed by the law of the owner's domicile, and an assignment valid by such law conveys title everywhere—unless the transfer contravenes some law of the place where it is situated.

Ockerman v. Cross, 54 N. Y. 29.

Guillander v. Howell, 35 N. Y. 657.

Warner v. Jaffrey, 96 N. Y. 248.

Moore v. Willett, 35 Barb. 663.

Kelly v. Crapo, 45 N. Y. 86.

Nassau Bank v. Yandes, 44 Hun, 55.

Therefore a valid foreign assignment acts to transfer per-

sonal property in this State, even though it contain provisions that would avoid it here.

Moore v. Willett, 35 Barb. 663.

On the other hand, a transfer of real estate is governed by the law of the *situs*.

Nicholson v. Leavitt, 4 Sandf. 252.

D'Ivernois v. Leavitt, 23 Barb. 63.

In respect to real estate situated in New Jersey, an assignment executed in another state, in contravention of the New Jersey statute prohibiting preferential assignments, will operate upon such real estate, subject to the rights of New Jersey creditors.

Blain v. Pool, 13 N. Y. State Rep'r, 571.

An assignment, executed in this State, conveying real estate elsewhere, may be attacked for fraud here.

D'Ivernois v. Leavitt, *supra*.

Assignment of property in New York by non-residents doing business here, delivered to, and accepted by, the assignee within the State, will be deemed to have been executed under, and its validity will be determined by, the laws of this State.

Grady v. Bowe, 11 Daly, 259.

Assignment sustained under the Canadian statute.

Moore v. Battin, 14 N. Y. State Rep'r, 191.

An assignment with preferences, though valid here, is invalid under the New Jersey statute, which does not tolerate preferences.

O'Niel v. Nagle, 15 N. Y. State Rep'r, 358.

A failure to comply with such statute, requiring debtors to annex to the assignment a sworn inventory and list of creditors, and to include therein all the property, whether joint or several, renders inapplicable a provision in the statute allowing a discharge of debts.

Huggard v. Lehman, 36 Hun, 307.

ASSIGNMENT LAW OF NEW YORK.

[L. 1877, c. 466, as amended by L. 1878, c. 318 ; L. 1884, c. 328 ; L. 1885, c. 380 ; L. 1885, c. 464 ; L. 1886, c. 283 ; L. 1887, c. 503 ; L. 1888, c. 294.]

§ 1.

TITLE.

This act may be cited for all purposes as “The general assignment act of eighteen hundred and seventy-seven.”

Scope.

Ch. 466, L. 1877, refers only to general assignments for the benefit of all the creditors and is inapplicable to the case of an assignment of a part of the debtor's property for the benefit of specified creditors.

Royer Wheel Co. v. Frost, 13 Daly, 233

A conveyance in pursuance of a deed of trust, entered into by the beneficiaries under a will, to settle disputes, is not an assignment for the benefit of creditors.

Lewis v. Miller, 23 Week. Dig. 495.

An instrument in the form of a bill of sale, transferring the whole of the debtor's property, if intended as a general assignment with preferences, is void as not complying with the statute.

Hine v. Plant, 46 Hun, 196.

§ 2.

REQUISITES OF ASSIGNMENT.

Every conveyance or assignment made by a debtor of his estate, real or personal, or both, to an assignee for the creditors of such debtor, shall be in writing, and shall specifically state therein the residence and the kind of business carried on by such debtor at the time of making the assignment, and the place at which such business shall then be conducted, and if such place be in a city, the street and number thereof, and if in a village or town, such apt designation as shall reasonably identify such debtor.

Every such conveyance or assignment shall be duly acknowledged before an officer authorized to take the acknowledgment of deeds, and shall be recorded in the county clerk's office in the county where such debtor shall reside or carry on his business at the date thereof. An assignment by copartners shall be recorded in the county where the principal place of business of such copartners is situated.

When real property is a part of the property assigned, and is situated in a county other than the one in which the original assignment is required to be recorded, a certified copy of such assignment shall be filed and recorded in the county where such property is situated.

The assent of the assignee, subscribed and acknowledged by him, shall appear in writing, embraced in or at the end of, or indorsed upon the assignment, before the same is recorded, and, if separate from the assignment, shall be duly acknowledged (as amended by L. 1888, ch. 294).

Acknowledgment.

Absolutely necessary to validity of instrument.

Hardmann v. Bowen, 39 N. Y. 196.

Britton v. Lorenz, 45 N. Y. 51.

Jones v. Bach, 48 Barb. 568.

Treadwell v. Sackett, 50 Barb. 440.

Smith v. Boyd, 10 Daly, 149.

Smith v. Tim, 14 Abb. N. C. 447.

Fairchild v. Gwynne, 16 Abb. Pr. 23.

May be taken before a notary public who is not a party to the assignment, although preferred as a creditor therein.

Wendell v. Reves, 26 Week. Dig. 239; s. c., 6 N. Y. State Rep. 863.

The requirement that the assignment shall be "duly acknowledgment" equivalent to a command that it shall be acknowledged conformably to the Revised Statutes.

Smith v. Tim, 14 Abb. N. C. 447.

No particular form is required.

Claffin v. Smith, 15 Abb. N. C. 241.

Where an assignment is properly acknowledged in fact, but the notary's certificate is defective, the latter may be corrected, and when corrected, full powers will be conferred on the assignee.

Camp v. Buxton, 34 Hun, 511.

A schedule of preferred creditors referred to in the assignment must be embraced in the acknowledgment.

Franey v. Smith, 47 Hun, 119; s. c., 16 N. Y. State Rep. 549.

A clerical error in certificate of acknowledgment will not render assignment void.

Claffin v. Smith, 15 Abb. N. C. 241.

May be made by attorney in fact.

Lowenstein v. Flaurand, 32 N. Y. 494.

Partnership assignment should be acknowledged by all the assignors who join in the execution.

Treadwell v. Sackett, 50 Barb. 440.

Cook v. Kelley, 14 Abb. Pr. 466.

Assignee claiming under assignment cannot question the instrument for want of acknowledgment.

Randall v. Dusenbury, 39 Super. Ct. 174.

Record.

No title passes before recording.

Rennie v. Bean, 24 Hun, 123.

Smith v. Boyd, 18 Week. Dig. 461.

But see cases holding that assignment takes effect from delivery page 15, and

Pancoast v. Spowers, 52 Super. (J. & S.) 523.

Neglect to record is not evidence of fraud.

Denzer v. Munday, 5 Robt. 636.

Delivery to the clerk for record raises a *prima facie* presumption of delivery to grantee.

Fayer v. Rockefeller, 63 N. Y. 268.

Where it includes real estate should also be recorded in Register's office.

Simon v. Kaliske, 6 Abb. Pr. N. S. 224.

Assignment by non-resident should be recorded where the property is situated.

Scott v. Guthrie, 25 How. 481.

ASSENT agreeably to statutory provisions is indispensable.

Rennie v. Bean, 24 Hun, 123.

If assent is not subscribed till after the record, the assignment is void.

Noyes v. Wernberg, 15 Abb. N. C. 164.

Schwartz v. Soutter, 41 Hun, 323.

Assent must be subscribed to the instrument itself, and not given by a separate writing.

Noyes v. Wernberg, *supra*.

Contra, *Scott v. Mills*, 18 Abb. N. C. 330 ; 27 Week. Dig. 142, holding that while the assent may be upon a separate piece of paper, it must, when executed, be attached to the deed of assignment, so that both constitute one instrument and be recorded together.

Scott v. Mills, 18 Abb. N. C. 330 ; 27 Week. Dig. 142.

An assignment by indenture, signed, sealed and acknowledged by both assignor and assignee, is a sufficient compliance with the statute, and a further assent is unnecessary.

Id.

It does not lie with a debtor of the assignor to object that the acknowledgment of the assignee's assent is defective.

Jones v. Howard Insurance Co., 10 N. Y. State Rep. 120.

§ 3.

INVENTORY AND SCHEDULES.

A debtor making an assignment shall, at the date thereof or within twenty days thereafter, cause to be made, and delivered to the county judge of the county where such assignment is recorded, an inventory or schedule containing:

1. The name, occupation, place of residence, and place of business of such debtor.

2. The name and place of residence of the assignee.

3. A full and true account of all the creditors of such debtor, stating the last known place of residence of each, the sum owing to each, with the true cause and consideration therefor, and a full statement of any existing security for the payment of the same.

4. A full and true inventory of all such debtor's estate at the date of such assignment, both real and personal, in law and in equity, with the incumbrances existing thereon, and of all vouchers and securities relating thereto, and the nominal as well as actual value of

the same according to the best knowledge of such debtor.

5. An affidavit made by such debtor, that the same is in all respects just and true. But in case such debtor shall omit, neglect or refuse to make and deliver such inventory or schedule within the twenty days required, the assignee named in such assignment shall, within thirty days after the date thereof, cause to be made and delivered to the county judge of the county where such assignment is recorded, such inventory or schedule as above required, in so far as he can; and for such purpose said county judge shall, at any time, upon the application of such assignee, compel by order such delinquent debtor, and any other person to appear before him and disclose, upon oath, any knowledge or information he may possess, necessary to the proper making of such inventory or schedule.

The assignee shall verify the inventory and schedule so made by him, to the effect that the same is in all respects just and true, to the best of his knowledge and belief. But in case the said assignee shall be unable to make and file such inventory or schedule, within said thirty days, the county judge may, upon application upon oath, showing such inability, allow him such further time as shall be necessary, not exceeding sixty days.

If the assignee fail to make and file such inventory or schedule, within said thirty days, or such further time as may be allowed, the county judge shall require, by order, the assignee forthwith to appear before him, and show cause why he should not be removed. Any person interested in the trust estate may apply for such order and demand such removal.

The books and papers of such delinquent debtor shall at all times be subject to the inspection and examination of any creditor. The county judge is authorized by order to require such debtor or assignee to allow such inspection or examination.

Disobedience to such order is hereby declared to be a

contempt, and obedience to such order may be enforced by attachment. The inventory or schedule shall be filed by said county judge in the office of the clerk of said county in which said assignment is recorded (as amended by L. 1878, ch. 318).

Schedules shall state actual and nominal value.

Rule 8, C. P.

Method of signing.

Rule 9, C. P.

Affidavit, when filed by assignee.

Rule 10, C. P.

Statement of name, &c., of assignor and assignee.

Rule 11, C. P.

Recapitulation.

Rule 12, C. P.

Contingent liabilities.

Rule 13, C. P.

Amendment of schedules.

Rule 14, C. P.

Filing schedule and inventory not necessary to validity of instrument; the title to property passes upon delivery of assignment.

Warner *v.* Jaffrey, 96 N. Y. 248, and cases cited *ante*, page 15.

But before the amendment of 1878 the assignment ceased to be a valid instrument after expiration of time and failure to file.

Matter of Leahy, 8 Daly, 124.

A schedule of preferred creditors, referred to in the body of the assignment, must be attached to and made part of the assignment, before that instrument is acknowledged and delivered by the assignors to the assignee.

Franey v. Smith, 47 Hun, 119; s. c., 16 N. Y. State Rep. 549.

Such schedule must be completed and annexed or attached prior to the acknowledgment, and be embraced therein.

Id.

Affidavit "to deponent's best knowledge, information and belief," sufficient.

Pratt v. Stevens, 94 N. Y. 387.

Several debtors must join in the verification.

Cook v. Kelly, 14 Abb. Pr. 466.

Security known to be fraudulent need not be included.

Pratt v. Stevens, *supra*.

Consideration of note need not be stated ; its date, time of payment, payee and amount is sufficient.

Id.

In absence of County Judge, inventory may be filed with clerk.

Id.

An inventory which sets forth the names and residences of the creditors and the amounts of the debts owing, with a brief statement for what the debts were created, is a sufficient statement of the nature of such debts and their cause and consideration.

Eastern Nat. Bank v. Hulshizer, 2 N. Y. State Rep. 93.

That the assignee rejected an appraisal made by disinterested persons, and accepted one made by his own friends, the same being correct, is no ground of removal.

Matter of McGarry, Daily Reg. 16 Dec. 1886.

§ 4.

ADVERTISEMENT FOR CLAIMS.

The county judge may, upon the petition of the assignee, authorize him to advertise for creditors to present to him their claims, with the vouchers thereof, duly verified, on or before a day to be specified in such advertisement, not less than thirty days from the last publication thereof, which advertisement or notice shall be published in two newspapers, to be designated by the county judge, as most likely to give notice to the persons to be served, not less than once a week for six successive weeks, and, if it appears that any of such creditors reside out of the State, then in like manner in the State paper.

Notice must be also served by mail.

Rule 31, C. P.

With direction to return to sender.

Rule 21, C. P.

Act of 1884, ch. 133, repealed so much of preceding laws as required publication in State paper, and provided that instead thereof the Court or Judge should designate a newspaper in the county wherein the papers "are required to be or are filed."

1884, ch. 133, § 2

This section does not make the publication of the advertisement for creditors the sole method of notification; it is simply auxiliary to other methods.

Matter of Gilbert, 9 Daly, 479.

Debt that is within the statute of frauds may be proved as a claim against estate.

Livermore v. Northrup, 44 N. Y. 107.

Assignee cannot refuse payment of preferred claim on the ground that it is fraudulent.

Matter of Ward, 10 Daly, 66.

Matter of McCallum, 10 Daly, 72.

Nor on the ground that it is usurious.

Chapin v. Thompson, 89 N. Y. 270.

Green v. Morse, 4 Barb. 332

But he may set up usury against an unpreferred claim.

Matter of Brown, 10 Daly, 115.

A trust creditor is not entitled to a preference over general creditors merely on the grounds of the trust nature of his claim. It must appear on equitable grounds that such claim is specifically to entitle a preference.

Matter of Cavin, 105 N. Y. 256.

The claims of a creditor from whom the assignor has obtained goods on consignment, to the proceeds of sales of such goods, cannot be paid by the assignee without giving the general creditors a hearing, and an opportunity of contesting the right of the consignors to follow the proceeds.

Matter of Watson, 3 How. Pr. N. S. 313.

Claims for liabilities incurred after the assignment cannot be paid unless provided for in the instrument.

Matter of Risley, 10 Daly, 44.

A claim which has not been proved will not be paid, though set forth in the schedules.

Matter of Burdick, 10 Daly, 49.

Court may order payment of preferred claim on a partial accounting.

Matter of Ward, 10 Daly, 66.

Unliquidated damages on breach of contract and loss of possible profits cannot be proved.

Matter of Adams, 15 Abb. N. C. 61.

State tax not entitled to priority unless preferred in assignment.

Matter of Lewis, 9 Daly, 220.

An assignee who, by mistake, pays a preferred creditor, a sum of money, to which the latter is not entitled, may recover it by action.

Matter of Morgan, 99 N. Y. 145.

§ 5.

ASSIGNEE'S BOND.

The assignee named in any such assignment shall, within thirty days after the date thereof, and before he shall have any power or authority to sell, dispose of or convert to the purposes of the trust any of the assigned property, enter into a bond to the people of the State of New York, in an amount to be ordered and directed by the county judge of the county where such assignment is recorded, with sufficient sureties to be approved of by such judge, and conditioned for the faithful discharge of the duties of such assignee and for the due accounting for all moneys received by him, which bond shall be filed in the clerk's office in the county where such assignment is recorded, but in case the debtor shall fail to present such inventory within the twenty days required, then the assignee, before the ten days thereafter shall have elapsed, may apply to said county judge by verified petition for leave to file a provisional bond, until such time as he may be able to present the schedule or inventory as hereinbefore provided.

Form of bond must be joint and several and comply with section 812 of Code.

Rule 15, C. P.

Justification of sureties.

Rules 16 and 17, C. P.

Affidavit for provisional bond.

Rule 18, C. P.

Title to assigned estate passes upon the due execution and record of assignment, and is not invalidated by neglect to file bond.

Ryan *v.* Webb, 39 Hun, 435, and cases cited, *ante*, page 15.

But filing of bond is indispensable to right of executing conveyance, and an attempt to make conveyance by assignee before filing is ineffectual.

Brennen *v.* Wilson, 71 N. Y. 502.

Woodworth *v.* Seymour, 22 Hun, 245.

Bond must be approved by a Judge of the Common Pleas in New York County, and the approval by a Judge of the Supreme Court is a nullity.

Matter of Robinson, 10 Daly, 148.

Section 1915 of the Code provides the method for suits on bond of assignees; and permission will be granted to any and all creditors who show themselves entitled to it, to bring suit upon such bond; and any number of such actions may be authorized.

Matter of Stockbridge, 10 Daly, 33.

§ 6.

REMOVAL OF ASSIGNEE.

The county judge shall, in the case provided in section 3, and may also, at any time, on the petition of one or more creditors, showing misconduct or incompetency of the assignee, or on the petition of the assignee himself, showing sufficient reason therefor, and after due notice of not less than five days to the assignor,

assignee, surety and such other person as such judge may prescribe, remove or discharge the assignee, and appoint one or more in his place, and order an accounting of the assignee so removed or discharged, and may enjoin such assignee from interfering with the assignor's estate, and make provision by order for the safe custody of the same, and enforce obedience to such injunction and orders by attachment; and upon his discharge upon his own application, such assignee's bond shall be canceled and discharged.

The new assignee shall give a bond, to be approved as above required.

The county judge shall have power, by order, to require or allow any inventory or schedule filed to be corrected or amended, and also to require and compel, from time to time, supplemental inventories or schedules to be made and filed within such time as he shall prescribe, and to enforce obedience to such orders by attachment (as amended by L. 1878, ch. 318).

Removal of assignee.

When the assignors are partners, notice of the removal should be given to each.

Matter of Cohen, 2 How. Pr. N. S. 523.

But if one of such assignors has left the State and his precise whereabouts are unknown, the service of notice may be as the court directs. The course indicated in § 797, Code Civ. Pro., is to be followed, giving double the time required by § 798.

Id.

The words "misconduct" and "incompetency" in this act embrace all the reasons for which an assignee ought to be removed.

Matter of Cohn, 78 N. Y. 248.

And the power of the court is as broad as that of a court sitting in equity.

Matter of Cohn, *supra*.

Failure to file bond is cause for removal.

Brennan v. Willson, 7 Daly, 59.

Hardmann v. Bowen, 39 N. Y. 276.

Upon failure to furnish bond and file inventory the assignee will not be permitted to reassign the assigned estate and be discharged. He should be removed and held to account.

Matter of Parker, 10 Daly, 16.

Matters occurring long before the assignee became such cannot be urged as grounds of removal, unless they affect his conduct as assignee.

Matter of McGarry, Daily Reg. Dec. 16, 1886.

The fact that the assignee is, at the execution of the assignment, a non-resident, does not disqualify, provided he does his duty and subjects himself to the process of the court.

Id.

That the assignee rejected an appraisal made by disinterested persons, and accepted one made by his own friends, the same being correct, is no ground of removal.

Id.

An assignee may be removed irrespective of any misconduct since acceptance of his trust, where his previous relations with judgment creditors of the assignee have been such as to render his position embarrassing in the event of anticipated suits by other creditors to set the judgment obtained aside.

Matter of Kaughran, 13 Daly, 526.

The removal of the assignee for misconduct may be postponed in the discretion of the court to a more opportune time, though sufficient grounds be shown for present removal.

Matter of Henlein, Daily Reg. July 21, 1884.

Assignee will not be discharged except upon an accounting.

Matter of Horsfall, 5 Abb. N. C. 289.

Matter of Yeager, 10 Daly, 7.

Matter of Dryer, Id. 8.

Matter of Groencke, Id. 17.

§ 7.

ADDITIONAL SECURITY.

The county judge may, upon his own motion or upon the application of any party in interest, and on such notice as he may direct to be given to the assignor, assignee and surety, require further security to be given whenever in his judgment the security afforded by the bond on file is not adequate.

§ 8.

FAILURE TO FILE BOND.

A failure to file any bond required by or under this act or the acts hereby amended, within the specified time, will not deprive the county judge of his power over the assignee or the trust estate.

§ 9.

ACTION ON ASSIGNEE'S BOND.

Any action brought upon an assignee's bond may be prosecuted by a party in interest by leave of the court; and all moneys realized thereon shall be applied by direction of the county judge, in satisfaction of the debts of the assignor, in the same manner as the same ought to have been applied by such assignee.

Any number of suits may be authorized on a bond. The method of bringing such suit is provided by section 1915 of the Code.

Matter of Stockbridge, 10 Daly, 33.

§ 10.

DEATH OF ASSIGNEE.

In case an assignee shall die during the pendency of any proceeding under this act, or at any time subsequent to the filing of any bond required herein, his personal representative or successor in office, or both, may be brought in and substituted in such proceeding on such notice (of not less than eight days), as the county judge may direct to be given ; and any decree made thereafter shall bind the parties thus substituted as well as the property of such deceased assignee, provided, however, that if such assignee die subsequent to the filing of his bond and before any proceedings may have been had thereunder, then the surety on such bond may apply to the county judge for an accounting, who may on such terms as to him seem just and proper, appoint another assignee and release such surety.

§ 11.

CITATION TO ACCOUNT.

A citation may be issued to all parties interested in the estate assigned, as creditors or otherwise, requiring them to appear in court on some day therein to be specified, and to show cause why a settlement of the account of proceedings of the assignee should not be had, and if no cause be shown, to attend the settlement of said account.

The county court must issue all citations mentioned in this act which must be returnable in court. It may issue a citation on the petition of an assignee, at any time after the assignment or on petition of a creditor, or an assignee's surety, or an assignor, at any time after the lapse of one year from the date of such assignment, or where an assignee has been removed and ordered to

account as hereinbefore provided (as amended by L. 1878, ch. 318).

Citation to be sealed and tested by clerk.

Rule 6, Com. Pleas.

The granting and signing of an order and citation to account by a county judge, instead of by the county court, is an irregularity waived by appearance without objection.

Langford v. Cook, 23 Week. Dig. 309.

Where service of the citation is made upon one who is both creditor of assignor and surety upon assignee's bond, and he appears upon the accounting, it may be assumed that he is served in both capacities.

Id.

Can be no accounting except on citation.

Matter of O'Brien, 16 Weekly Dig. 435.

Application for citation is a special proceeding, and motion costs may be allowed and proceedings stayed till payment.

Matter of Thorn, 10 Daly, 71.

A preferred creditor is entitled to notice of final accounting, notwithstanding such creditor has not filed his claim and the time limited by advertisement for filing the same has expired.

Matter of Gouy, 13 Daly, 413.

A citation returnable before "one of the Judges" of the Court does not conform to the requirement of this section; the process must require parties "to appear in court."

Matter of Davis, 10 Daly, 31.

Where citation has been set aside for irregularity, a new citation may be issued on the same petition.

Id.

Omission of name of chief justice from the teste is immaterial.

Id.

Denial of petitioning creditors' debt by assignee will not save the assignee from an accounting.

Matter of Davis, 10 Daly, 31.

Matter of Farnum, 14 Hun, 159.

Nor can he prevent an accounting on the ground that he has given no bond.

Matter of Farnum, *supra*.

Matter of Davis, *supra*.

No citation will be issued while a suit is pending in the Supreme Court for an accounting.

Matter of Cromien, 10 Daly, 41.

Citation will not be granted on petition of assignor, where parties have rested for many years, without offering any excuse for the long delay, but they will be left to their action for an accounting.

Matter of Darrow, 10 Daly, 141.

Order should be an order to show cause in first instance.

Matter of Cowing, 26 Hun, 214.

§ 12.

SERVICE OF CITATION TO ASSIGNEE.

A citation issued on the petition of a creditor may be addressed to and served on the assignee alone, but on or after the return of such citation the assignee may have a general citation issued to all parties interested.

Assignee must file account with petition for general citation.

Rule 22, C. P.

§ 13.

SERVICE OF CITATION FOR ACCOUNTING.

A citation to all persons interested must be served on all parties other than the petitioner who are interested in the fund, including assignors, assignees, and their sureties, except that if the time limited by due advertisement for presentation of claims has expired before the issue of the citation, creditors who have not duly presented their claims need not be served.

In case the creditors of such assignor, who have proved their claims, exceed twenty-five in number, then the county judge, upon proof by affidavit that such creditors exceed such number, may by order direct such citation to be served on each creditor who has proved his claim, by depositing a copy of the same, at least thirty days prior to the return day thereof, in the post office at the place where the assignee or assignees, or either of them, reside, duly inclosed and directed to each of such creditors, at his last known post office address, with the postage prepaid; and by publishing such citation once a week for at least four weeks prior to such return day in one or more newspapers, to be designated by such county judge as most likely to give notice to such creditors (as amended by L. 1878, c. 318).

Shall be under seal and tested by clerk.

Rule 6, Com. Pleas.

Notice by mail shall have direction to return.

Rule 21, C. P.

Service by mail is of no effect unless the order provides therefor.

Matter of Schaller, 10 Daly, 57.

§ 14.

TIME OF SERVICE.

A citation personally served within the county of the judge or an adjoining county must be so served at least eight days before the return thereof; if in any other county, at least fifteen days before the return thereof.

§ 15.

SERVICE BY PUBLICATION.

The county judge may direct service to be made by publication when he is satisfied by affidavit or verified petition either that the person to be so served is unknown, or that his residence cannot, after diligent inquiry, be ascertained, or that he cannot, after due diligence, be found within the State.

The order for such service must direct service of the citation upon such person to be made by publication thereof in one newspaper to be designated by the county judge as most likely to give notice to the person to be served, and also, if it appear that any such person resides without the State, then in the State paper for such length of time as he may deem reasonable, not less than once a week for six weeks, and that a copy of the citation be forthwith deposited in the post office duly inclosed and directed to each person so served, at his last known place of residence or post office address, and the postage paid thereon, at least thirty days before the return day thereof.

§ 16.

PERSONAL SERVICE WITHOUT THE STATE.

When publication has been ordered, personal service

without the State made if within the United States at least thirty days, or if without the United States, at least forty days before the return day is equivalent to publication and mailing.

§ 17.

SERVICE ON MINORS.

Personal service upon minors and persons incompetent shall be made in the manner prescribed by law for the service of citations issued by a surrogate, in cases of final accounting.

§ 18.

SERVICE ON COPARTNERS.

Personal service upon one of two or more creditors who claim as copartners or otherwise as joint creditors shall be equivalent to personal service on all, and voluntary appearance either in person or by attorney shall be equivalent to personal service.

§ 19.

APPEARANCE.

On the return of a citation to all parties interested, any person claiming an interest, although not served, may appear, and become a party on duly presenting his claim.

Appearance, how made.

Rule 7. Com. Pleas.

§ 20.

ACCOUNTING.

On a proceeding for an accounting under this act the county court shall have power :

1. To examine the parties and witnesses on oath in relation to the assignment and accounting and all matters connected therewith and to compel their attendance for that purpose and their answers to questions, and the production of books and papers.

2. To require the assignee to render and file an account of his proceedings, and to enforce the same in the manner provided by law for compelling an executor or administrator to comply with a surrogate's order for an account.

3. To take and state such account, or to appoint a referee to take and state it ; and such referee shall have the powers enumerated in subdivision one of this section.

4. To settle and adjudicate upon the account and the claims presented, and to decree payment of any creditor's just proportional part of the fund, or, in case of a partial accounting, so much thereof as the circumstances of the case render just and proper.

5. To discharge the assignee and his surety at any time, upon performance of the decree, from all further liability upon matters included in the accounting, to creditors appearing and to creditors not having appeared after due citation, or not having presented their claims after due advertisement.

6. On proof of a composition between the assignor and his creditors, to discharge the assignee and his sureties from all further liability to the compounding creditors appearing or duly cited, and to authorize the assignee to release the assets to the assignor ; provided, however, that if there be any creditors not assenting to the composition, the court shall determine what

proportion of the fund shall be paid to or reserved for creditors not assenting, which shall not be less than the sum or share to which they would be entitled if no composition had been made, and may decree distribution accordingly.

7. To adjourn the proceedings from time to time, issue further citations if necessary, and amend the petition and proceedings thereon before decree in furtherance of justice.

8. To punish as for a contempt any disobedience or violation of any order made or process issued in pursuance of this act or the acts hereby amended, and to restrain by arrest and imprisonment any party or witness when it shall satisfactorily appear that such party or witness is about to leave the jurisdiction of the court, and to take bail to secure the attendance of such party or witness, to be prosecuted under the order of the court in case of forfeiture by and for the benefit of the party in whose interest such examination shall be ordered.

9. To exercise such other or further powers in respect to the proceedings and the accounting therein as a surrogate may by law exercise in reference to an accounting by an executor or administrator (as amended by L. 1878, ch. 313).

The subjects of the accounting, under subd. 4, are the claims of creditors for a proportionate part of the fund to be distributed, and not the claims of third parties in hostility to the assignment, such as claims against the assignee for conversion.

Matter of Marklin, 13 Daly, 105.

Discharge of assignee only upon accounting.

Rule 23, C. P.

Form of account.

Rule 25, C. P.

Vouchers to be attached to account.

Rule 26, C. P.

Objections to account may be presented to referee or brought out on cross-examination. Testimony to be signed.

Rules 27, 28, C. P.

Report of referee, what to contain.

Rule 29, C. P.

The decree upon an accounting is binding upon all creditors whether their claims have been presented or not.

Kerr v. Blodgett, 48 N. Y. 62.

A discharge, to become operative upon the distribution by the assignee of certain funds remaining in his hands, does not take effect until the condition is complied with.

Julien v. Lalor, 47 Hun, 164.

Assignee must show that payments made by him to the assignor were beneficial to the estate.

Duffy v. Duncan, 35 N. Y. 187.

Moneys that have been paid by the assignee in good faith should be allowed on accounting when the assignment is held invalid.

Coope v. Bowles, 42 Barb. 87.

Young v. Brush, 28 N. Y. 667.

Assignee chargeable with losses to estate resulting from entrusting funds to a cotrustee and used by the latter in his individual capacity.

Bruin v. Gillet, 44 Hun, 298.

Assignee who has taken possession of assigned property is liable to account although he has filed no bond.

Luddington's Petition, 5 Abb. N. C. 307.

Matter of Farnum, 75 N. Y. 187.

Assignor is entitled to notice of accounting.

Matter of Hulbut, 9 Abb. N. C. 132.

Assignee is entitled to costs on accounting as in civil actions under the Code.

Matter of Rauth, 10 Daly, 52.

Assignee who uses the trust fund to purchase claims for less than their ratable share must account for the moneys so made.

Matter of Coffin, 10 Daly, 27.

Assignee will be allowed reasonable counsel fee, as one of the expenses in the execution of his trust.

Matter of Watt, 10 Daly, 11.

Matter of Worthley, 10 Daly, 12.

Matter of Rauth, 10 Daly, 52.

But not for a general retainer.

Matter of Van Horn, 10 Daly, 131.

Matter of Carrick, 13 Daly, 181.

Assignee will not be allowed for services of counsel in preparing inventory and schedules and for performing those acts that are merely formal.

Matter of Johnson, 10 Daly, 123.

Matter of Wolf, 1 N. Y. State Rep. 273.

Matter of Carrick, 13 Daly, 181.

Nor for drawing deed of assignment.

Id.

Nor for drawing simple accounts.

Meyer v. Hazard, 17 N. Y. State Rep. 26.

It is proper to allow an assignee for counsel fees in suits, wherever the services of an attorney are actually necessary.

Matter of Wolf, 1 N. Y. State Rep. 273.

Where actions are brought to set aside an assignment, the assignee, if successful, will be allowed expenses incurred in employing counsel, but will not be allowed such expenses if unsuccessful.

Meyer v. Hazard, 17 N. Y. State Rep. 26.

The allowance must be to the assignee, and charged by him in his account, and not to the counsel.

Matter of Worthley, 10 Daly, 12.

Matter of Thomas, 5 Abb. N. C. 354.

Allowance will not be made to counsel for creditors.

Matter of Watt, 10 Daly, 11.

Matter of Currier, 8 Daly, 119.

General counsel of assignee is not entitled to retainer in suit brought by him.

Matter of Schaller, 10 Daly, 57.

Burden is upon assignee to show necessity for and reasonableness of charges.

Matter of Manahan, 10 Daly, 39.

May be charged with improper and unreasonable refusal or neglect to exercise the powers granted by ch. 314, L. 1858, to disaffirm or resist acts done, transfers and agreements by the assignor in fraud of creditors.

Matter of Carpenter, 45 Hun, 552; s. c., 27 Week. Dig. 253.

But not unless the evidence of neglect is plain, and the same is to be judged by the matters as they appeared or might have appeared to assignee at the time, and not as they may appear on a subsequent labored investigation.

Id.

Not chargeable with failure to prosecute action against fraudulent vendors of assignor, unless it appears that a valid cause of action existed, and that assignee had knowledge of the same, or should have known it.

Matter of Gerry, 18 Daly, 373.

To impose upon an assignee, personally, the costs of an action which he has defended, he must be chargeable with bad faith.

Jack v. Robie, 48 Hun, 181.

Expenses of an accounting by a retiring assignee are a charge against the estate and should be paid by the new assignee.

Matter of Elmore, 10 Daly, 48.

Matter of Rauth, 10 Daly, 52.

But not if assignee, to suit his own convenience, refuses to go on with trust.

Matter of Edwards, 10 Daly, 68.

Referee's and stenographer's fees and other disbursements upon an accounting made necessary by the assignee's improprieties, may be charged against assignee personally.

Meyer v. Hazard, 17 N. Y. State Rep. 26.

Upon account by retiring assignor, proof of the value of estate received by him is admissible.

Matter of Edwards, 10 Daly, 68.

The actual value given in the inventory is *prima facie* the amount thereof. The burden is on the assignee to show that the actual value is less, or upon attacking creditors to show that is greater.

Matter of Wolf, 1 N. Y. State Rep. 273.

Should be allowed on accounting for payment of preferred debt that was not proved but paid by him.

Matter of Finck, 10 Daly, 100.

Will not be allowed for payments without proper vouchers, though made to persons who could not write, and in a business where it was not customary to take receipts.

Matter of Marklin, 10 Daly, 122.

The question of improper payments by an assignee is to be raised upon accounting, and not upon a motion under § 3246, Code Civ. Pro., to charge the assignee, personally, with costs of an action which he has defended.

Jack v. Robie, 48 Hun, 181.

Assignee who carries on business of assignor at a loss is chargeable therefor.

Matter of Dean, 86 N. Y. 898.

Matter of Rice, 10 Daly, 1.

Matter of Orsor, Id. 26.

Matter of Petchell, Id. 102.

Matter of Marklin, Id. 122.

Matter of Hyman, 13 N. Y. State Rep. 136.

An assignee who undertakes to complete an unfinished contract of the assignor to deliver goods, becomes subject to the liabilities existing between the original parties.

Patton v. Royal Baking Powder Co., 45 Hun, 248.

Will not be allowed expenses of carrying on business but will be given the reasonable expenses of preparing goods for sale.

Matter of Rauth, 10 Daly, 52.

Referees.

Rule 30 of the General Rules of Practice applies to reports of referees under this act.

Matter of Scheu, 10 Daly, 11.

Section 1016 of the Code,—requiring the taking of an oath before hearing,—is applicable to references hereunder.

Matter of Vilmar, 10 Daly, 15.

Report on final accounting may be confirmed on consent of creditors.

Matter of Weinhaus, 5 Abb. N. C. 355.

Matter of Putnam, 2 Law Bul. 17.

Motion to confirm may be made at Special Term Chambers, and need not be at special term for enumerated motions.

Boegler v. Eppley, 40 Hun, 523.

Report of referee should show mailing of the notices required by Rule 31 (30); the proper service of the citation and what creditors appeared on return of citation.

Matter of Phillips, 10 Daly, 47.

Matter of Schaller, 10 Daly, 57.

Referee will be allowed same fees as referee in an action, to be taxed by the clerk, from whom an appeal lies to the court. He is entitled to payment for time spent in auditing account.

Matter of Schaller, 10 Daly, 57.

Referee's fees must be taxed if objected to.

Matter of Marklin, 10 Daly, 123.

Stipulation for referee's fees is not binding on the court, as it does not fall within the Code provision.

Matter of Currier, 8 Daly, 119.

No fees will be allowed for unnecessary investigations.

Matter of May, 13 Daly, 24.

Assignee and the sureties upon his bond will be discharged only after an accounting, upon citation and proper service thereof.

Matter of Merwin, 10 Daly, 13.

Matter of Lewenthal, 10 Daly, 14.

And will not be discharged without an accounting, even after a composition by all the creditors.

Matter of Horsfall, 5 Abb. N. C. 289.

Matter of Yeager, 10 Daly, 7.

Matter of Dryer, 10 Daly, 8.

Matter of Groencke, 10 Daly, 17.

Matter of Stowell, 46 Hun, 342.

Nor until there has been an advertisement for claims.

Matter of Groencke, 10 Daly, 17.

Matter of Dryer, 10 Daly, 8.

Court cannot withhold discharge where there is no opposition.

Matter of May, 13 Daly, 24.

Action for accounting.

The jurisdiction possessed by all courts of equitable jurisdiction is concurrent with the county court and not exclusive.

Schuehle v. Reiman, 86 N. Y. 270.

Converseville Co. v. Hill, 14 Hun, 609.

Hurth v. Bower, 30 Hun, 151.

Matter of Cromien, 10 Daly, 41.

The fact that actions are pending in another court to set aside the assignment, is not a bar to a suit to compel an accounting in the common pleas.

Matter of Dare, 13 Daly, 220.

Nor does it furnish an excuse for delaying the account.

Id.

In an action to compel an assignee to account, brought by preferred creditors in behalf of themselves and all creditors similarly situated, where a creditor appears and files his claim, he thereby makes himself a party to the action, and is entitled as such to notice of all subsequent proceedings.

Bradley v. Chamberlain, 27 Week. Dig. 94.

Jurisdiction should be entertained by that tribunal whose process was first issued.

Schuehle v. Reiman, 86 N. Y. 270.

Travis v. Myers, 67 N. Y. 542.

Supreme court will not exercise its right when proceedings have been commenced by petition in the county court.

Niagara B'k v. Lord, 33 Hun, 557.

Chipman v. Montgomery, 63 N. Y. 221.

Schuehle v. Reiman, 86 N. Y. 270.

Supreme court is not deprived of jurisdiction by reason of advertising for claims under order of Common Pleas.

Ludeke v. McKeever, 27 Week. Dig. 164.

And will restrain proceedings commenced after the jurisdiction of the county court has attached.

Travis v. Meyers, *supra*.

Parties to action for accounting.

Any creditor provided for in assignment may commence the action.

Brooks v. Peck, 38 Barb. 519.

Haines v. Hollister, 64 N. Y. 1.

Matter of Farnum, 75 N. Y. 187.

All creditors are necessary parties.

Matter of Farnum, 75 N. Y. 187.

Brooks v. Peck, 38 Barb. 519.

Though when they are numerous one may bring the action for all.

Code, §448.

Assignee, representatives of a deceased assignor and surviving partners of an assigning firm may be joined as parties

Haines v. Hollister, 64 N. Y. 1.

§ 21.

EXAMINATION OF WITNESSES AND BOOKS.

The county judge may also at any time, on petition of any party interested, order the examination of witnesses and the production of any books and papers by any party or witness before him or before a referee appointed by him for such purposes, and the evidence so taken, together with books and papers, or extracts therefrom, as the case may be, shall be filed in the county clerk's office, and may be used in evidence by any creditor or assignee in any action or proceeding then pending, or which may hereafter be instituted. No witness or party as above provided, shall be excused from answering on the ground that his answer may criminate him, but such answer shall not be used against him in any criminal action or proceeding.

Examination under this section rests entirely in the discretion of the court.

Matter of Sweezy, 10 Daly, 107.

Petition for examination made by a corporation should be

verified by an officer thereof, authorized to take action in its behalf.

Matter of Brown, 10 Daly, 115.

Assignor may be examined when he refuses to deliver title deeds of the assigned real estate.

Matter of Strauss, 1 Abb. N. C. 402.

Assignor, assignee, creditors and sureties are "parties" within the meaning of this act.

Matter of Bryce, 10 Daly, 18.

Order for production of books and papers and examination of witnesses may be made at any time, the examination itself being a "proceeding" under this section.

Matter of Bryce, *supra*.

It is not necessary to prove a demand for, and refusal of, an inspection before applying for order.

Id.

An examination can only be ordered in aid of the assignment.

Matter of Everit, 10 Daly, 99.

Matter of Goldsmith, *Id.* 112.

Matter of Brown, *Id.* 115.

Matter of Holbrook, 99 N. Y. 539.

Granting creditors the privilege of inspecting the books in the assignee's hands, in presence of the assignor, and requiring from him statements and explanations under oath in connection with such examination, as to the state of his accounts and assets and disposition made of the same, with a view of knowing whether he has made full and correct schedules and disclosed all his property to the assignee and put him in possession of the same, constitutes an examination not necessarily hostile to the assignment.

Matter of Landaur, 22 Week. Dig. 73.

The fact that the allegations of the petition, if established, would support an action to set aside the assignment as fraudu-

lent, is not ground for refusing the examination, or for vacating an order directing an examination.

Matter of Kapelovich, 22 Week. Dig. 13.

Where the petition for the examination discloses a lawful reason therefor, the question whether the alleged reason is the true one and whether the application is made in good faith, becomes a question of fact for the judge to whom the petition is addressed.

Id.

The fact that the petitioner may, upon the examination, develop fraudulent transactions on the part of the assignors and assignee, sufficient to set aside the examination at the suit of other creditors, is no ground for refusing the examination.

Matter of Wilkinson, 36 Hun, 134.

When the petition shows that there is reasonable ground for apprehending that the assignor has fraudulently disposed of his assets, or that the assignor or assignee have fraudulently omitted assets from the inventory, or placed upon the schedules claims which are fraudulent in whole or in part, an examination under section 21, may, and should be ordered.

Id.

The examination in supplementary proceedings of a judgment debtor, who has made a general assignment, is not limited to property acquired since the assignment, but may embrace an inquiry into the fraudulent disposition of his property by the assignor.

Schneider v. Altman, 8 Civ. Pro. 242.

An examination whose object is to discover evidence that may be used in an action (either already begun or merely in contemplation) to set aside the assignment as fraudulent, must be had under the Code of Civ. Pro., and not under the General Assignment act.

Matter of Rindskopf, 8 Civ. Pro. 246, n.

One of two copartners who have assigned may be examined to ascertain the facts upon which the ownership of a trade-mark depends.

Matter of Sweezy, 10 Daly, 107.

§ 22.

ORDERS AND DECREES.

All orders or decrees in proceedings under this act shall have the same force and effect, and may be entered, docketed and enforced and appealed from, the same as if made in an original action brought in the county court.

And all proceedings under this act shall be deemed to be had in court. The said court shall always be open for proceedings under this act. The county judge when named in this act, shall, in such proceedings, be deemed to be acting as the court.

The clerk of the court shall keep a separate book, in which shall be entered each case, the date and place of record of the assignment, and a minute of all proceedings therein, under this act, with such particularity as the court shall direct by general order. He shall record therein at length the orders and decrees of the court, settling, rejecting or adjusting claims, and directing the payment of money, or releasing assets by the assignee, and removing or discharging the assignee and his sureties, and such other orders as the court shall direct by general order.

The said clerk shall securely keep the papers in each case in a file by themselves, and shall be entitled to a fee of one dollar for filing all the papers in each case, and entering the proceedings in the minute book, and fifty cents to be paid by the assignee, unless otherwise directed, for recording each order or decree required by this act or the general order of the court (as amended by L. 1878, ch. 318).

A final decree on an accounting cannot be enforced by attachment as in contempt; the judgment being enforceable by execution alone.

Matter of Stockbridge, 10 Daly, 33.

Matter of Radtke, 10 Daly, 119.

The court has, however, full powers to punish by attachment disobedience to interlocutory orders.

Ibid.

A creditor to whom certain moneys are directed to be paid out of the amount adjudged to be in the hands of the assignee on final accounting, cannot docket a judgment against the assignee personally.

Matter of Rosenback, 10 Daly, 128.

Section 22 does not confer upon the court power by a summary proceeding to divest the assignee of property which he claims to have taken under the assignment.

Matter of Potter, 44 Hun, 197.

To establish a valid claim against the assigned estate for breach of assignor's contract, the claimant must proceed under the Assignment act. Such claim cannot be established in an action against assignors.

Matter of Adams, 15 Abb. N. C. 70, n.

§ 23.

COMPROMISE OF CLAIMS.

The county judge where the assignment is recorded may, upon the application of the assignee, and for good and sufficient cause shown, and upon such terms as he may direct, authorize the assignee to sell, compromise or compound any claim or debt belonging to the estate of the debtor.

But such authority shall not prevent any party interested in the trust estate from showing upon the final accounting of such assignee that such debt or claim was fraudulently or negligently sold, compounded or compromised.

The sale of any debt or claim heretofore made in good faith by any assignee shall be valid, subject, however, to the approval of the county judge, and the

assignee shall be charged with and be liable for, as part of the trust fund, any sum which might or ought to have been collected by him (as amended by L. 1885, ch. 464).

Application to compromise claim may be granted on petition without a reference, where amount involved is small.

Matter of Wooster, 10 Daly, 6.

Upon an assignee's petition to compromise claims the court may in its discretion order notice to creditors.

Matter of Younge, 5 Abb. N. C. 346.

Court will not grant a general authority to compromise claims.

Matter of Ransom, 8 Daly, 89.

When composition is entered into, those creditors who do not become parties thereto are entitled on final accounting to the proportion they would have had if no composition had been made.

Matter of Orser, 10 Daly, 26.

Representatives of a deceased assignor may be subrogated to the rights of creditors upon fulfilling the conditions of a composition agreement entered into by creditors and deceased.

Matter of Leslie, 10 Daly, 76.

Assignee has the right to compromise, if he act in good faith, without an order of court.

ANON. v. GALPCKE, 5 HUN, 245.

§ 24.

JURISDICTION OF COMMON PLEAS.

In the city and county of New York all papers,

except assignments, which by this act are required to be hereafter filed or recorded in the county clerk's office, shall be filed or recorded in the office of the clerk of the court of common pleas of said city and county; and any judge of said court may exercise all the powers of a county judge for said county for the purposes of this act, and any act or proceeding commenced or returnable before, or instituted or ordered by, one of the judges of said court, may be heard, continued or completed, by or before any other of them.

See Laws of 1885, ch. 380, conferring jurisdiction upon supreme court.

§ 25.

POWERS OF COURT.

Any proceeding under this act shall be deemed for all purposes, including review by appeal or otherwise, to be a proceeding had in the court as a court of general jurisdiction, and the court shall have full jurisdiction to do all and every act relating to the assigned estate, the assignees, assignors and creditors, and jurisdiction shall be presumed in support of the orders and decrees therein unless the contrary be shown, and after the filing or recording of an assignment under this act, the court may exercise the powers of a court of equity in reference to the trust and any matters involved therein.

This section gives the court no power to charge the fund with allowances to counsel for creditors in proceedings against assignee.

Matter of Manahan, 10 Daly, 39.

A county court has, under § 25, power to order the payment to trust creditors of their claims in full out of the proceeds of sales of trust property, in preference to general creditors.

Matter of Connor, 24 Week. Dig. 217.

The section is intended to make the county court a court of original jurisdiction in respect to the powers conferred by said act, and to vest it with equity powers in reference to the trust and any matters involved therein, which may be brought before the court by a proceeding under the act. But it does not authorize a proceeding against the assignee to compel him to restore property alleged never to have belonged to the assignee.

Matter of Witmer, 40 Hun, 64.

Common Pleas has all the power of a court of equity in matters arising under this act.

Matter of Bonner, 8 Daly, 75.

Can order assignee to consent that fund held by a third person, and claimed by estate, be paid to the equitable owner.

Idem.

If a creditor has received more than his share of the fund the court may direct a restoration so as to effect an equal distribution, and may enforce such direction by appropriate order.

Re Morgan, 21 Week. Dig. 341 ; s. c., 99 N. Y. 145.

Receiver appointed upon assignment to improper person.

Stadelman v. Loehr, 47 Hun, 327 ; s. c., 14 N. Y. State Rep. 247.

Under circumstances showing fraud.

First Nat'l Bank of Westport v. Raymond, 14 N. Y. State Rep. 868.

§ 26.

REFERENCE OF DISPUTED CLAIM.

The court, in its discretion, may order a trial by jury or before a referee, of any disputed claim or matter

arising under the provisions of this act, or the acts hereby amended. It may in its discretion award reasonable counsel fees and costs, determine which party shall pay the same, and make all necessary rules to govern the practice under this act. The assignee or assignees named in any assignment shall receive for his or their services a commission of five per cent. on the whole sum which will have come into his or their hands (as amended by L. 1878, ch. 318).

Assignee, compensation of.

An agreement by assignor to pay assignee a greater compensation than that fixed by the statute, does not bind assigned estate.

Boegler v. Eppler, 40 Hun, 523.

Section 26, chapter 466, 1877, allows assignees a commission on moneys received only, and does not include the value of property not converted into money.

Matter of Hulburt, 89 N. Y. 259.

An assignee who pays the claim of a preferred creditor partly in cash, and partly in property accepted in lieu of cash, is entitled to commissions upon the entire amount of money and property paid and turned over to such creditor.

Matter of Bassford, 13 Daly, 22.

A composition before assignee has converted the assigned property into cash will deprive him of his commission.

Matter of Hulburt, 89 N. Y. 259.

Where assignee has received no money the court may order a suitable compensation to be paid before it will compel him to return the property.

Id.

Assignee is not entitled to the commission if unfaithful to his trust.

Matter of Coffin, 10 Daly, 27.

Or guilty of grave misconduct.

Matter of Wolf, 1 N. Y. State Rep. 273.

Misconduct of assignee cannot be graduated. If removed for misconduct in office, whatever the degree of misconduct, he is not entitled to commissions.

Matter of Danzig, 16 N. Y. State Rep. 708.

Intentional false swearing in accounts and schedules sufficient to deprive him of commissions.

Matter of Hyman, 13 N. Y. State Rep. 136.

Referee's fees same as in civil action.

Matter of Fairchild, 10 Daly, 74.

On trial before referee of disputed claim costs before and after trial, and trial fee for issue of fact are taxable, and an allowance may be granted not exceeding the statutory rate in civil actions.

Matter of Risley, 10 Daly, 44.

Matter of Fairchild, 10 Daly, 74.

Court is not bound to allow a commission to assignee.

Matter of Rauth, 10 Daly, 52.

A reference to "hear and determine" the issues in a disputed claim is proper. The decision of the referee can only be reviewed by the general term.

Matter of Fairchild, 10 Daly, 74.

In reference of disputed claim not included in schedule the burden is on claimant.

Matter of Jeselson, 10 Daly, 104.

Where claim was materially reduced, the assignee was held to be entitled to costs as the prevailing party.

Olin v. Lockwood, 9 Daly, 68.

§ 27.

DEFINITIONS.

Whenever words in this act importing the plural number are used in describing or referring to any matters, parties or persons, any single matter, party or person shall be deemed to be included, although distributive words may not be used, and when any singular matter, party or person, is described or referred to by words importing the singular number or the masculine gender, several matters and persons, and females as well as males, and bodies corporate as well as individuals, shall be deemed to be included, unless otherwise specially provided or unless there be something in the subject or context repugnant to such construction.

§ 28.

REPEALING CLAUSE.

Chapter three hundred and forty-eight of the laws of eighteen hundred and sixty, entitled "An act to secure to creditors a just division of the estates of debtors, who convey to assignees for the benefit of creditors," and the several acts amendatory thereof, are hereby repealed, but this shall not affect any proceedings had ; and any proceedings pending under the acts hereby referred to may be continued under this act.

§ 29.

PREFERENCE OF EMPLOYEES.

In all distributions of assets under all assignments made in pursuance of this act, the wages or salaries actually owing to the employees of the assignor or

assignors at the time of the execution of the assignment, shall be preferred before any other debt; and should the assets of the assignor or assignors not be sufficient to pay in full all the claims preferred, pursuant to this section, they shall be applied to the payment of the same *pro rata* to the amount of each such claim (as added by L. 1884, ch. 328, and amended by L. 1886, ch. 283).

Decisions under ch. 328, Laws of 1884.

Assignment not invalidated by failure to insert therein preference for wages due employees.

Richardson v. Thurber, 104 N. Y. 606.

Burley v. Hartson, 23 Week. Dig. 536, 40 Hun 121

Richardson v. Herron, 39 Hun, 537.

Johnston v. Kelly, 43 Hun, 379.

Contra, Roberts v. Tobias, 1 N. Y. State Rep. 245.

Harriot v. Masterson, Id.

The objection that such debts are not specifically preferred cannot be raised by general creditors, and is only available to employees.

Richardson v. Herron, 39 Hun, 537.

An assignment directing preferences in favor of certain employees for wages, which omits other employees to whom wages are also due, is invalid.

Smith v. Hartwell, 1 N. Y. State Rep. 241; aff'd 28 Week. Dig. 239.

Decisions under ch. 283, Laws of 1886.

Employees included within the act, although not actually employed by assignor at date of assignment.

Matter of Heath, 46 Hun, 114; s. c., 11 N. Y. State Rep. 627; 27 Week. Dig. 406.

The acceptance of a note by an employee for wages due, does not destroy the preference created in his favor by the act, unless the intention was to change the nature of the indebtedness into a loan, and the note is received in payment thereof.

Id.

§ 30.

OTHER PREFERENCES LIMITED AND DEFINED.

In all general assignments of the estates of debtors, for the benefit of creditors, hereafter made, any preference created therein (other than for the wages or salaries of employees, under chapter 328, of the Laws of 1884, and chapter 283, of the laws of 1886) shall not be valid except to the amount of one-third in value of the assigned estate left after deducting such wages or salaries, and the cost and expenses of executing such trust; and should said one-third of the assets of the assignor or assignors be insufficient to pay in full the preferred claims to which, under the provisions of this section, the same are applicable, then said assets shall be applied to the payment of the same *pro rata* to the amount of each said preferred claim (as added by L. 1887, ch. 503).

CONCURRENT JURISDICTION OF SUPREME COURT.

[LAWS OF 1885, CHAP. 350.]

SECTION 1. All powers, rights and duties conferred upon county courts and county judges by chapter four hundred and sixty-six of the laws of eighteen hundred and seventy-seven, entitled, "An act in relation to assignments of the estates of debtors for the benefit of creditors," and by acts amendatory thereof and additional or supplemental thereto, are hereby also conferred upon and shall be exercised by the supreme court and the justices of the supreme court of the State of New York, concurrently with county courts and county judges.

All applications under said acts made in the supreme court shall be made to the court, or a justice thereof, within the judicial district where the assignment is recorded, and all proceedings and hearings under said acts had in the supreme court upon the return of a citation shall be had at a special term of said court held in the county where the judgment debtor

resided at the time of the assignment, or in case of an assignment by copartners, in the county where the principal place of business of such copartners was at the time of such assignment.

§ 2. This act shall take effect immediately.

RULES OF THE COURT OF COMMON PLEAS

WITH REGARD TO

INSOLVENT ASSIGNMENTS.

Rule 1.

DUTIES OF THE CLERK.

The clerk, in addition to the books now kept by him, shall provide a register and docket.

'In the register shall be entered in full every decree and final order made in these proceedings, according to date, and the docket shall contain a brief memorandum of each day's proceedings according to the respective titles.

The register and docket shall be, at all times during court hours, open for public inspection.

Rule 2.

FILING OF PAPERS.

Each petition, or order, or decree filed, shall be indorsed with the day and date of such filing, and the papers in each case shall be kept in a file by themselves.

Rule 3.

TAKING PAPERS FROM FILES.

No paper shall be permitted to be taken off of the files of the court for any purpose, except on an order of the court.

Rule 4.

INDORSEMENT OF PAPERS.

Every paper filed shall have a brief memorandum indorsed on the outside cover, showing the nature thereof.

Rule 5.

COPIES OF PAPERS.

Copies of any and all papers in these proceedings shall be furnished to any person applying for the same, upon the payment of the legal fees.

Rule 6.

PROCESS, HOW ISSUED.

All process, citations, summons and subpoenas shall issue out of the court under the seal thereof, and be tested by the clerk.

Rule 7.

APPEARANCES, HOW MADE.

Any party may appear in these proceedings, either in person or by attorney; if by attorney, the name of such attorney, with his place of business and residence, shall be indorsed on each and every paper filed by him, and his name shall be entered in the docket.

Rule 8.

SCHEDULES.

The schedule of liabilities and assets required to be filed by the assignor or assignee shall fully and fairly state the nominal and actual value of the assets, and the cause for the difference, and a separate affidavit will be required which shall fully explain the cause of such difference. If required, the affidavits of disinterested experts, as to such value, must be furnished.

Rule 9.

SIGNING OF SCHEDULES.

Where there may be more than one sheet of paper necessary to contain the schedules, each page shall be signed by the person or persons verifying the same. The sheets of paper on which the schedules are written shall be securely fastened before the filing thereof, and shall be indorsed with the full name of the assignor and assignee, and when filed by an attorney, shall also be indorsed with his name and business address.

Rule 10.

FILING BY ASSIGNEE. AFFIDAVIT.

Should the schedules be filed by the assignee, there must be a full affidavit made by such assignee and some disinterested expert, showing the nature and value of the property assigned.

Rule 11.

CONTENTS OF AFFIDAVIT.

The name, residence, occupation and place of business of the assignor, and name and place of residence of

the assignee, may be incorporated in the affidavit or annexed to the schedules.

Rule 12.

RECAPITULATION.

There shall be a recapitulation at the end of the schedules, as follows :

Debts and liabilities amount to \$; Assets nominally worth \$; Assets actually worth \$

Rule 13.

CONTINGENT LIABILITIES.

Contingent liabilities shall appear on a separate sheet of paper.

Rule 14.

AMENDMENTS OF SCHEDULES.

Application to amend the schedules shall be made by verified petition, in which the amendments sought to be made shall appear in full, and such amendments shall be verified in the same manner as the original schedules were verified.

Rule 15.

FORM OF BOND.

The bond shall be joint and several in form, and must comply with the requirements of section 812 of the Code of Civil Procedure.

Rule 27 of the *General Rules* of the Common Pleas is as follows :

“ Every bond required to be given by an assignee under the act of April 13, 1860, respecting voluntary assignments for the

benefit of creditors, must specify the place of residence of each surety named therein at the time of presenting it for approval ; it must be accompanied by an affidavit showing the nominal value, and also the actual value of the property assigned ; and no bond will hereafter be approved until these requirements are complied with. No bond will be approved until the schedules of assets and liabilities shall have been filed, unless satisfactory proof, by affidavit, be produced, showing the reason of not filing the same."

Rule 16.

JUSTIFICATION OF SURETIES.

The court may in its discretion require any surety to appear and justify.

Rule 17.

NUMBER AND QUALIFICATION OF SURETIES.

At least one of such sureties shall be a freeholder. If the penalty of the bond be twenty thousand dollars or over, it may be executed by two sureties justifying each in that sum, or by more than two sureties the amount of whose justification united is double the penalty of the bond.

Rule 18.

PROVISIONAL BOND. AFFIDAVIT.

The affidavit on which application is made for leave to file a provisional bond, must show fully and fairly the nature and extent of the property assigned, and good and sufficient reason must be shown why the schedules cannot be filed, and it must appear satisfactorily to the court that a necessity exists for the filing of such provisional bond, and for the purposes of this act the affidavit so filed shall be deemed a schedule of the assigned property until such time as the regular schedules shall be filed.

Upon the filing of the schedules the amount of the bond will be determined finally, and should the provisional bond already filed be deemed sufficient, an order will be granted making such bond as approved the final bond.

Rule 19.

BOOKS OF ASSIGNEE.

Every assignee shall keep full, exact and regular books of account of all receipts; payments and expenditures of money by him, which said books shall always, during business hours, be open to the inspection of any person interested in the trust estate.

Rule 20.

SALES AT AUCTION.

In making sales at auction of personal property the assignee shall give at least ten days' notice of the time and place of the sale and of the articles to be sold, by advertisement in one or more newspapers, and he shall give notice of the sale at auction of any real estate at least twenty days before such sale. Upon such sales the assignee shall sell by printed catalogue in parcels and shall file a copy of such catalogue, with the prices obtained for the goods sold, with his final account.

Rule 21.

SERVICE OF NOTICE ON CREDITORS.

When any notice is served on the creditors of the insolvent, pursuant to the provisions of the statute, or these rules, by mail, every envelope containing such notice shall have upon it a direction to the postmaster at the place to which it is sent to return the same to the

sender within ten days unless called for. Upon every application made to the court upon such service an affidavit shall be presented, showing whether any such notices have been returned.

Rule 22.

FILING ACCOUNTS ON GENERAL CITATION.

Upon application made for a general citation, the assignee shall file with his petition his account with the vouchers.

Rule 23.

REFERENCE OF ACCOUNT.

The assignee must file an account in all cases, which shall be referred for examination.

ASSIGNEE TO ADVERTISE BEFORE DISCHARGE.

No discharge shall be granted an assignee who has not advertised for claims pursuant to section 4 of the statute and the 30th rule.

DISCHARGE ONLY ON ACCOUNTING.

No discharge can be granted an assignee and his sureties in any case, whether the creditors have been paid or have released or have entered into composition or not, except in a regular proceeding for an accounting, under section 20 of the act, commenced by petition for citation and citation thereon to all persons interested in the estate.

Rule 24.

SUBSTITUTED ASSIGNEE.

Whenever an assignee shall have been removed either on his own petition or on the petition of any person interested in the estate, and another person appointed as assignee in his place and stead, a certified copy of the order made on such petition shall be filed and recorded in the clerk's office of the county wherein the original assignment was recorded, and the clerk of the county shall make such suitable entry on the margin of the record of the original assignment as will show the appointment of such substituted assignee, and the said certified copy of the order shall be attached to the original assignment.

Rule 25.

FORM OF ASSIGNEE'S ACCOUNT.

The account of the assignee shall be in the nature of a debit and credit statement; he shall debit himself with the assets as shown in the schedules as filed, and credit himself with any decrease as well as expenses.

Rule 26.

STATEMENT OF EXPENSES. VOUCHERS.

The statement of expenditures shall be full and complete, and the vouchers for all payments other than trivial expenses shall be attached to the account.

Rule 27.

PROCEEDINGS ON ACCOUNTING.

The affirmative on the accounting shall be with the assignee, and objections to the account may be presented to the referee in writing, or be brought out on a cross-examination, and in the latter case they must be specifically taken and entered on the minutes.

Rule 28.

TESTIMONY TO BE FILED WITH REPORT.

The testimony taken shall be signed by the several witnesses, and attached to and filed with the report of the referee.

Rule 29.

REPORT OF REFEREE.

The report of the referee shall show all the jurisdictional facts necessary to confer power on the court, such as the proper executing and acknowledging of the assignment, the recording of the same, the filing of the schedules and bond, the advertising for creditors, the issuing of the citation, the presenting of the account, and where any items may be disallowed in the account of the assignee, the same shall be fully set out in the report.

Rule 30 of the General Rules of Practice is applicable to referee's reports on final accounting.

Matter of Putnam, 2 Law Bul. 17.

This rule, so far as it is relevant to such reports, is as follows :

"In references other than for the trial of the issues in an action, or for computing the amount due in foreclosure cases, the testimony of the witnesses shall be signed by them, and the report of the referee shall be filed with the testimony, and a

note of the day of the filing shall be entered by the clerk in the proper book, under the title of the cause or proceeding, and the said report shall become absolute, and stand as in all things confirmed, unless exceptions thereto are filed and served within eight days after service of notice of the filing of the same. If exceptions are filed and served within such time, the same may be brought to a hearing at any special term thereafter, on the notice of any party interested therein."

Rule 30.

NOTICE TO PRESENT CLAIMS.

A copy of the notice or advertisement requiring creditors to present their claims must be mailed to each creditor whose name appears on the books of the assignor, with the postage thereon prepaid, at least thirty days before the day specified in such advertisement or notice, and proof of such mailing must be required on application for a final decree, unless personal service thereof is made upon such creditors.

[Formerly Rule 31.]

FORMS

ADAPTED TO THE PRACTICE OF THE VARIOUS COURTS OF
THE STATE OF NEW YORK UNDER

THE GENERAL ASSIGNMENT ACT.

I.

GENERAL ASSIGNMENT BY INDIVIDUAL.

THIS INDENTURE, made this *first* day of *October*, in the year one thousand eight hundred and eighty-eight, between A. B., residing at No. street, in the city of , dealer in , at No. street, in the city of , party of the first part, and X. Y., of said city, party of the second part, WITNESSETH, That whereas the party of the first part is indebted to divers persons in sundry sums of money, which he is unable to pay in full, and is desirous of providing for the payment of the same, so far as he is able, by an assignment of all his property for that purpose :

Now, THEREFORE, the said party of the first part, in consideration of the premises and of the sum of one dollar to him paid by the party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, assigned, transferred and set over, and by these presents does grant, bargain, sell, assign, transfer and set over, unto the party of the second part, his successors and assigns, all and singular the lands, tenements, hereditaments, appurtenances, goods, chattels, stock, claims, demands, property and effects of every description belonging to the party of the first part, wherever the same may be

situated (except such property as is exempt by law from levy and sale under an execution).

TO HAVE AND TO HOLD the same, unto the said party of the second part, his successors and assigns :

IN TRUST, NEVERTHELESS, to take possession of, and to sell the same with all reasonable dispatch, and to convert the same into money, and also to collect all such debts and demands hereby assigned as may be collectible, and with and out of proceeds thereof,

FIRST, to pay and discharge all the trust and reasonable expenses, costs and charges of executing this trust, and of carrying the same into effect, together with the lawful commission of the party of the second part for his services in executing said trust;

SECOND, to pay the wages or salaries actually owing to the employees of the assignor at the time of the execution of the assignment, in full ; and should the assets of the assignor not be sufficient to pay in full all said claims, then the assets shall be applied to the payment of the same *pro rata* to the amount of each of such claims.

THIRD, out of the residue of the moneys aforesaid, if any there be, to pay in full E. F., of said city of New York, the amount of a certain note held by him, dated January 1st, 1885, for the sum of one thousand dollars for money loaned by him to the assignor.*

FOURTH, to pay and discharge in full, if the residue of said proceeds is sufficient for that purpose, all the debts and liabilities now due or to grow due from the said party of the first part, with interest thereon ; and if the residue of said proceeds shall not be sufficient to pay the said debts and liabilities and interest in full, then to apply the said residue of said proceeds to the payment of said debts and liabilities ratably and in proportion.

FIFTH, after the payment of all the said debts and liabilities in full, if there shall be any remainder or residue of said property or proceeds, to repay and return the same to the said party of the first part, his executors, administrators or assigns.

And the said party of the first part does hereby make, constitute and appoint the said party of the second part his true and lawful attorney irrevocable, with full power and authority to do all acts and things which may be necessary in the premises to the full execution of the trust hereby created, and to demand, recover and receive of and from all and every person or persons,

* See Laws 1887, ch. 503.

all property, debts and demands due and owing to the said party of the first part, and to give discharges for the same ; to sue, prosecute, defend and implead for the same ; and execute, acknowledge and deliver all necessary deeds, instruments and conveyances.

And the said party of the first part hereby authorizes the said party of the second part to sign the name of the said party of the first part to any instrument in writing, whenever it shall be necessary so to do, to carry into effect the object, design and purpose of this trust.

AND THE said party of the second party does hereby ACCEPT THE TRUST created and reposed in him by this instrument, and covenants and agrees to and with the said party of the first part that he will faithfully and without delay execute the said trust according to the best of his skill, knowledge and ability.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

____ [L. s.]
 ____ [L. s.]

Signed, sealed and delivered }
 in presence of }

State of New York, }
 City and County of New York, } ss.

On the first day of October, in the year one thousand eight hundred and eighty eight, before me personally, came A. B. and X. Y., to me known, and known to me to be the individuals described in and who executed the foregoing instrument, and severally acknowledged that they executed the same.

J. S. D.,
 Notary Public,
 City and County of New York.

II.

ASSIGNMENT BY PARTNERSHIP.

Follow, with those formal changes which are obvious, Form I. as far as the second paragraph, and proceed as follows :

SECOND. Out of the proceeds of the separate and individual property of each of said parties of the first part to pay any and all wages and salaries actually owing to the employees of said parties of the first part respectively, at the time of the execution hereof in full ; and should the assets of the parties of the first part, respectively, be insufficient to pay in full said claims, then to apply the same to the *pro rata* payment thereof.

THIRD. Out of the residue of the individual assets aforesaid, if any there be, to pay the separate and individual debts of the parties of the first part respectively in full ; and if the separate assets of either of the parties of the first part be insufficient to pay his individual indebtedness in full, to apply the residue aforesaid to the *pro rata* payment of the individual liabilities respectively.

FOURTH. If any surplus remain of the net proceeds of the separate and individual property of either of the parties of the first part after payment of his separate and individual debts and liabilities in full, to apply the surplus towards the payment of the copartnership debts and liabilities.

FIFTH. The net proceeds of the copartnership property, with the surplus, if any there be, of the proceeds of the individual property of the assignors as aforesaid, shall be applied to the payment of any and all wages and salaries actually owing to the employees of the parties of the first part at the time of the execution hereof, in full ; and should said assets be insufficient to pay the same in full, then the payment shall be applied to the *pro rata* payment thereof.

SIXTH. Out of the proceeds, if any there be, to pay in full the remaining liabilities of the copartnership, and if the assets shall be insufficient therefor, to apply the same to the *pro rata* payment thereof.

Follow, with necessary formal changes, Form I. from the fifth paragraph to the end. Preferences either individual or copartnership, may be created in terms similar to those of the preceding form.*

* See Laws of 1887, ch. 503.

III.

INVENTORY AND SCHEDULES.

In the matter of the assignment
of
to
for the benefit of creditors.

First. [State the name, occupation, place of residence and place of business of the debtor.]

Second. [State the name and place of residence of the assignee] ~~assignor~~

Third. A full and true inventory of all the estate of A. B. on the *first* day of *October*, 1888, the date of the assignment of said A. B., both real and personal, in law and in equity, and the incumbrances existing thereon, and of all vouchers and securities relating thereto, and the nominal as well as actual value of such estate according to the best knowledge of said assignor.

Assets.	Nominal value.	Actual value.	Cause of difference.

Fourth. A full and true account of all the creditors of A. B. with the last known place of residence of each, the sum owing to each of them by the said A. B., with the true cause and consideration therefor, and a full statement of any existing security for the payment of the same.

Creditors.	Last known place of residence.	The sum owing to each of them respectively.	The true cause and consideration therefor.	A statement of any existing security for the payment of the same.

RECAPITULATION.

Debts and liabilities amount to \$

Assets nominally worth \$

Assets actually worth \$

IV.

AFFIDAVIT TO INVENTORY AND SCHEDULES.

In the matter of the assignment
of
to
for the benefit of creditors.

Affidavit of Debtor.

County of New York, ss.

A. B. being sworn, says, that he is the assignor named in the above assignment, which bears date the *first* day of *October*, 1888, recorded in the office of the clerk of the County of New York, the *first* day of *October*, 1888; that the inventory and schedules hereto annexed contain a true and full account of all the creditors of said deponent, the last known place of residence of each creditor, where the same is known to deponent and, where the same is not known, the fact is so stated therein. Also the sum owing to each creditor and the nature of each debt or demand, whether arising on written security, account or otherwise. Also, the true cause and consideration of such indebtedness, in each case. Also a statement of any existing security for the payment of any such debts. Also a full and true inventory of all the estate, both real and personal, in law and equity of A. B. at the date of said assignment, and the incumbrances existing thereon, and of all vouchers and securities relating thereto, and the value of such estate according to the best knowledge of deponent. And deponent further says that the annexed inventory and schedules are, in all respects, just and true, according to the best knowledge, information and belief of this deponent.

[Signed]

A. B.

Sworn to before me, this fourteenth day }
of October, 1888.

_____,
Notary Public.

V.

BOND OF ASSIGNEE.

KNOW ALL MEN BY THESE PRESENTS, that we,
 residing at No. _____ in the _____ and _____ residing
 at No. _____ in the _____ and _____ residing
 at No. _____ in the _____ are held and firmly bound
 unto the people of the State of New York, in the sum of *one*
thousand dollars, lawful money of the United States of America,
 to be paid to the said people ; to which payment well and truly
 to be made, we bind ourselves, our and each of our heirs, execu-
 tors and administrators, jointly and severally, firmly by these
 presents, Sealed with our seals.

Dated the first day of October, one thousand eight hundred
 and eighty-eight :

Whereas A. B. has made an assignment of his property, in
 trust to the above X. Y. for the benefit of his creditors, dated
 the first day of October, one thousand eight hundred and eighty-
 eight, recorded on the first day of October, 1888, in the office of
 the clerk of the City and County of New York.

Now, THEREFORE, the condition of this obligation is such,
 that if the above bounden assignee shall faithfully execute and
 discharge the duties of such assignee, and duly account for all
 moneys received by him as such assignee, then this obligation to
 be void, else to remain in full force and virtue.

Sealed and delivered in the } presence of _____ }	_____	_____	[L. S.]
	_____	_____	[L. S.]
	_____	_____	[L. S.]

State of New York, }
 City and County of New York. } ss.

_____, one of the sureties to the foregoing bond, being
 duly sworn, says, that he is a resident and freeholder within
 this State, and is worth the sum of two thousand dollars, over
 all his debts and liabilities, and exclusive of property exempt by
 law from execution.

[Signed]

Sworn to before me, this first day }
 of October, 1888. }

_____,
 Notary Public.

State of New York, }
 City and County of New York. } ss.

— — —, one of the sureties to the foregoing bond, being duly sworn, says, that he is a resident and *freeholder* within this State, and is worth the sum of two thousand dollars, over all his debts and liabilities, and exclusive of property exempt by law from execution.

[Signed]

Sworn to before me, this first day }
 of October, 1888. }

— — —,
 Notary Public.

City and county of New York, ss.

I certify that on this first day of October, 1888, before me personally appeared the within named — — —, known to me to be the individuals described in and who executed the within bond, and severally acknowledged that they executed the same.

— — —,
 Notary Public.

I hereby approve of the within bond and of the sufficiency of the sureties therein.

HENRY WILDER ALLEN,
 Judge.

VI.

ORDER FOR LEAVE TO FILE PROVISIONAL BOND.

The verified petition for leave to file a provisional bond should conform to the provisions of Rule 18 of the Common Pleas, in stating "fully and fairly the nature and extent of the property assigned, and good and sufficient reason must be shown why the schedules cannot be filed." The affidavit of disinterested experts as to the value of the assigned estate should accompany the petition.

ORDER.

Court of Common Pleas,
for the City and County of New York.

In the matter of the assignment of to for the benefit of creditors.	}
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On reading and filing the verified petition of the above named assignee and the affidavit of _____, disinterested experts, as to the value of the assigned estate, by which it appears that the actual value of said estate, which will come into the hands of said assignee by virtue of said assignment is _____ dollars; now on motion of H. O., attorney for the petitioner.

IT IS ORDERED, That the prayer of said petition be granted, and that the assignee herein have leave to file a provisional bond to the People of the State of New York, for the faithful discharge of his duties as such assignee, and for the due accounting for all moneys received as assignee of the estate of A. B. under the general assignment for benefit of creditors, executed by said A. B. and dated October 1st, 1888, in the penal sum of _____ dollars, with good and sufficient sureties to be approved by a judge of this court; and

IT IS FURTHER ORDERED, that upon the filing of the inventory and schedules of said estate, said assignee make out and file a bond with like condition in such amount as may be then ordered.

VII.

EXTENSION OF TIME FOR ASSIGNEE TO FILE INVENTORY, &c.

The affidavit of the assignee should state the present condition of the trust, and the reasons that have prevented the filing of the inventory and schedules.

ORDER.

Court of Common Pleas,
For the City and County of New York.

In the matter of the assignment of to for benefit of creditors.	}
--	---

Upon reading the affidavit of the above named assignee, verified this day, whereby it appears that the time allowed by law for the assignor to file the inventory and schedules has expired, and that he has not filed the same, and that the assignee is unable to file the same within the time limited by law therefor; and on motion of H. O., attorney for said assignee,

It is ORDERED, that said assignee be and he hereby is allowed twenty days from this date within which to prepare and file the inventory and schedules of the assigned estate.

Dated New York, , 1888.

— — — — —, Judge.

VIII.

ORDER FOR EXAMINATION OF ASSIGNOR.

The application for the order should be by verified petition setting forth the condition of the trust ; the omission of the assignor to file schedules and inventory, or any act or refusal to act that tends to the injury of creditors.

The examination can only be had *in aid* of the assignment.

Matter of Everit, 10 Daly, 99.

Matter of Goldsmith, Id. 112.

Matter of Brown, Id. 115.

Matter of Sweezy, Id. 107.

ORDER.

Court of Common Pleas,
For the City and County of New York.

<p>In the matter of the assignment of to for benefit of creditors.</p>	}
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On reading and filing the petition of the above named assignee, this day verified by him, and on motion of said assignee,

It is ORDERED, that the assignor above named be and appear before me [*or*, before a referee] at the Court House, in the City of New York, on the day of , 1888, at ten o'clock in the forenoon, then and there to submit to an examination relative to the assignment herein, and to disclose on oath any and all knowledge and information he may possess necessary to the preparation of the schedules and inventory herein, and that may aid the proper execution of the trust created by said assignment.

— — —, Judge.

[If an examination of books is desired a clause should be inserted therefor.]

IX.

ADVERTISEMENT FOR CLAIMS.

Requisites of Petition.

The petition for leave to advertise for claims should state the making, acceptance and record of the assignment and the qualification by the assignee as such ; the number of the creditors, and whether any of them are residents of another state, and a prayer for leave to advertise in accordance with section 4 of the General Assignment Act.

ORDER.

Court of Common Pleas,
For the City and County of New York.

In the matter of the assignment of to for benefit of creditors.
--

On reading and filing the verified petition of the above named assignee, and on motion of _____ attorney for said assignee,

It is ORDERED, That the prayer of said petition be and it hereby is granted, and said assignee is hereby authorized to advertise for creditors of said assignor to present to him their claims, with the vouchers therefor, duly verified, on or before a day to be specified in said advertisement, not less than thirty days from the last publication thereof, which advertisement or notice shall be published once a week for six successive weeks in the _____, a newspaper published in the City of New York, and in the _____, a newspaper published in said city.

_____, Judge.

ADVERTISEMENT.

In pursuance of an order made by Hon. _____ on the day of _____ 1888, notice is hereby given to all creditors and persons having claims against A. B., lately doing business in the

City and County of New York, under the firm name of _____, that they are required to present their claims, with the vouchers therefor, duly verified to the subscriber, the assignee of said A. B., for the benefit of creditors, at his office, No. _____ Broadway, in the City of New York, on or before the _____ day of _____, 1888.

Dated, New York, _____, 1888.

_____, Assignee.

X.

PROOF OF DEBT.

State of New York, }
City and County of New York, } ss.

_____, being duly sworn, doth depose and say, that he is _____, that the annexed statement of the account of A. B., lately doing business at the City of New York, in the State of New York, is just, true and correct, that there is now due deponent the sum of _____ dollars; that no part thereof has been paid or satisfied, and that there are no set offs, or counter-claims thereto to the knowledge or belief of deponent.

[Signed]

Sworn to before me, this _____ day }
of _____, 1888. }

_____, Notary Public.

XI.

REFERENCE OF DISPUTED CLAIM.

The application should be by verified petition, upon notice, and should state the present condition of the trust; that a claim has been presented to the assignee against the estate, with a description thereof, and the fact that it is disputed by the assignee, and the reason for which he has disputed it, and praying that the issue so raised be referred.

ORDER.

At a Special Term of the Court of Common
Pleas, &c.

Present, Hon.

Judge.

In the matter of the assignment of to For the benefit of creditors.	}
--	---

Upon reading and filing the petition of the above named assignee verified this day, by which it appears that there is an issue between said assignee and _____, who has presented a claim against said estate for the sum of _____ dollars, which is disputed by said assignee; now on motion of said assignee

It is ORDERED, That said issue be, and the same hereby is, referred to _____, Esq., as sole referee to hear and determine the same.

See Matter of Fairchild, 10 Daly, 74.

Matter of Feigelstock, 5 Mon. L. B. 71.

XII.**PETITION FOR CITATION FOR FINAL ACCOUNTING.****Petition by Assignee.**

In the matter of final accounting of as assignee of the estate of A. B., under a general assignment for benefit of creditors	}
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To the Court of Common Pleas for the City and County of New
York :

The petition of the above named assignee respectfully shows :

I. That on the *first* day of *October*, A. D. 1888, A. B., residing in the City, County and State of New York, at No. _____ street, executed in due form, a general assignment to your petitioner for the benefit of creditors, and that the petitioner duly accepted said assignment and trust.

II. That said assignment was recorded in the office of the clerk of the City and County of New York on the day of its execution, and petitioner qualified as such assignee and entered upon the execution of his trust.

III. That the inventory and schedules, as required by law, were made and filed by your petitioner on the day of , 1888, in the office of the Clerk of the Court of Common Pleas, for the City and County of New York; and that thereafter petitioner gave a bond as such assignee in the form, for the sum and approved as required by the statutes of New York.

IV. That upon the prayer of this petitioner an order was made by Hon. , one of the judges of this court, on the day of , 1888, authorizing the petitioner to advertise for creditors to present their claims to him, against said assignor on or before a day to be therein specified; that said notice was published as provided by said order, and that a copy thereof was duly mailed to each creditor whose name appears on the books of the assignor, postage prepaid, at least thirty days before the day specified in said advertisement or notice, as appears by the affidavit of said mailing hereunto annexed.

V. That the time within which claims were to be presented to petitioner as specified in said notice, expired on the day of , 1888; and that creditors, exceeding twenty-five in number, have presented claims against the assignor to your petitioner, and are interested in the trust fund in the hands of petitioner by virtue of the assignment.

VI. That the names and address of creditors who have presented claims are as follows:

And your petitioner therefore prays that a citation may issue out of, and under the seal of this court, to all persons interested in said estate, requiring them to appear in court upon some day to be specified therein, and to show cause why a settlement of the account of the assignee, your petitioner, should not be had, and if no cause be shown, to attend the settlement of said account.

[*Verification.*]

Petition by Creditor.

The petition should set forth the present status of the trust, the nature and amount of the claim which the petitioner has against the estate, the fact that more than a year has elapsed since the date of the assignment, and that no account has been filed, concluding with a prayer substantially as given above.

XIII.

ORDER FOR CITATION.

At a Special Term of the Court of Common
Pleas for the City and County of New
York, on the day of , 1888.
Present, Hon. Judge.

In the matter of the final accounting of as assignee of the estate of A. B. under a general assignment for benefit of creditors.	}
--	---

On reading and filing the verified petition of the above named assignee [*or of* a creditor of said assignor], dated the day of 1887, and on motion of attorney for said assignee [*or creditor*].

IT IS ORDERED,

That a citation issue herein to all parties interested in the estate assigned by A. B. to the above named assignee by a general assignment for the benefit of creditors, dated the day of 1887, and recorded in the office of the clerk of the City and County of New York, to appear in court on a day therein to be specified, and to show cause why a settlement of the account of the proceedings of the assignee should not be had, and if no cause be shown, to attend the settlement of such account.

And, it appearing from said verified petition that the creditors of said assignor, who have proved their claims, exceed twenty-five in number,

It is further ordered,

That said citation be served on each creditor who has proved his claim, by depositing a copy of the same, at least thirty days

prior to the return day thereof, in the post office at the place where the assignee resides, duly enclosed and directed to each of such creditors, at his last known post office address, with the postage prepaid ; and by publishing such citation once a week, for at least four weeks prior to such return day, in the a newspaper published in the city and county of New York.

XIV.

CITATION FOR ACCOUNTING.

THE PEOPLE OF THE STATE OF NEW YORK, to all persons interested in the estate of A. B., assigned to _____ for the benefit of creditors, send GREETING :

You and each of you are hereby cited and required personally to be and appear at a Special Term of the Court of Common Pleas for the City and County of New York to be holden in the county court house, in the City of New York, on the _____ day of _____, 1888, at ten o'clock, A.M., there and then to show cause why a final settlement of the accounts of assignee of above named A. B., insolvent debtor, should not be had, and if no cause be shown, then to attend the final settlement of the assignee's accounts.

In testimony whereof, I have hereunto caused the seal of the said Court of Common Pleas for the City and County of New York to be hereunto affixed.

[SEAL.]

WITNESS, Hon. _____, Chief Justice of the said court, this _____ day of _____, 1888.

NATHANIEL JARVIS, Jr.,
Clerk.

_____,
Attorney for Assignee.

XV.

ASSIGNEE'S ACCOUNT.

Court of Common Pleas
for the city and county of New York.

In the matter of the final accounting
of
assignee of

To the Hon. Court of Common Pleas for the City and
County of New York :

I, _____ assignee of A. B. under a general assign-
ment for benefit of creditors, present the following account of
my proceedings as such assignee.

I. The above named assignor on the _____ day of _____,
1887, being a resident of the City, County and State of New
York, executed in due form a general assignment of all his
property to me in trust for the benefit of creditors ; said assign-
ment was duly recorded in the office of the clerk of the City and
County of New York on the day of its execution. I accepted
said trust and took possession of the assigned property.

II. Said assignor on the _____ day of _____, 1887,
made and delivered an inventory of the assigned property and a
schedule of his creditors as required by law, and the same were
upon the last named date filed in the office of the clerk of the
Court of Common Pleas, for the City and County of New York,
whereby it appears that

The debts and liabilities amount to \$

The assets are nominally worth \$

The assets are actually worth \$

III. An order authorizing the publication of a notice to the
creditors of said assignor was granted by Hon. H. W. A. one of
the judges of the Court of Common Pleas, on the _____ day
of _____, 1887, and said notice was duly published as
required by said order, and a copy thereof duly mailed to each
creditor whose name appears on the books of the assignor, in
accordance with the rules of this court. The order and notice,
together with proof of publication and mailing, are filed with
this account.

IV. The schedule hereto annexed and marked " A " contains

a statement of all the property embraced in the inventory, all of which has been sold by me by private sale and at public auction, with proper care and due diligence, together with the prices, time and manner of sale, and a statement of all money collected by me and for which I am accountable.

V. The schedule annexed hereto and marked "B" contains a statement of all property belonging to the estate which has come into my possession, and not included in said inventory.

VI. The schedule annexed hereto and marked "C" contains a statement of all debts mentioned in the assignor's schedule, which were not collected by me, and the reason therefore, and why the same are not collectible.

No assets other than those herein set forth have come to my possession or knowledge, and all increase or decrease in the value of the property is properly accounted for herein.

VII. The schedule annexed hereto and marked "D" contains a statement of all moneys paid for necessary expenses of said estate, with the reasons for such expenditure.

VIII. The schedule annexed hereto and marked "E" contains a statement of all the claims of creditors presented to me in pursuance of said notice, with the names of the claimants, the nature of the claim, and the amount and date thereof.

IX. I charge myself as follows :

To Amount received as per inventory \$

" Increase as per schedule "A."

" Property not included in inventory,
as by schedule "B." . . .

I credit myself as follows :

By Amount of debts not collected as
appears by schedule "C." . . .

" Amount of schedule "D." . . .

Leaving in my hands a balance of . . . \$

To be distributed agreeably to the provisions of said assignment, after deducting therefrom the expenses of this accounting and my commissions.

[Signed]

Assignee.

Dated New York,

1888.

City and County of New York, ss.

I, _____, being duly sworn, say, that the charges made in the foregoing account and in the schedules thereto annexed are in all particulars true and correct; that I have charged myself all the interest received by me for moneys which have come into my possession and for which I am accountable; that the moneys therein stated as having been collected were all that were collectible according to the best of my knowledge, information and belief, on the debts stated in the account, at the time of this settlement thereof; that the allowances in said account for the decrease in the value of any assets, and the charges therein for the increase in such value, are correctly made, and that I do not know of any error in said account or of any omission therefrom, which may in anywise prejudice the rights of any persons interested in said estate.

And deponent further avers that the charges under twenty dollars which appear in this account, and for which no vouchers are produced, or for which I may not be able to produce vouchers or other evidences of payment, have actually been paid and disbursed by me as charged.

[Signed] _____.

Sworn to this _____ day of _____, 1888, }
before me.

_____,
Notary Public.

XVI.

ORDER OF REFERENCE.

At a Special Term of the Court of Common
Pleas, &c., holden at, &c.
Present, Hon. J. F. D.,

Judge

In the matter of the final accounting
of
assignee of A. B. }

The above named assignee for the benefit of creditors of said
A. B. under a general assignment made on the _____ day of

, 1887, and recorded in the office of the clerk of the City and County of New York on the same day, having filed his account as such assignee herein on the day of , 1887 ; and a citation having been issued out of and under the seal of this court to all persons interested in said assigned estate to attend the final settlement of said account.

Now, therefore, on the said account filed as aforesaid, the papers and schedules thereto annexed, said citation and the proof of the due service thereof and on motion of said assignee by his attorney

IT IS ORDERED, that it be referred to , Esq., counsellor at law, to take and state the accounts of the said assignee of his proceedings as such assignee of said assigned estate, with authority to said referee to examine the parties and witnesses on oath in relation to said assignment and accounting, and all matters connected therewith ; and

IT IS FURTHER ORDERED, that said referee take proof and report as to what persons are entitled to share in the distribution of said assigned estate, and in what priority and proportion ; and

IT IS FURTHER ORDERED, that any party to this proceeding, and any creditor, may object to any claim presented before said referee, and that said referee shall thereupon take the proofs and report as to the validity of such claim so objected to ; and

IT IS FURTHER ORDERED, that said reference proceed at and that days' notice of the time and place of hearing be given to all creditors who have presented claims or who appeared upon the return of said citation.

XVII.

REPORT OF REFEREE.

Court of Common Pleas,
For the City and County of New York.

In the matter of the final accounting of Assignee of	}	Referee's Report.
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To the Court of Common Pleas, for the City and County of
New York :

I, _____, referee appointed herein, by order dated _____, to take and state the accounts of the above named assignee, do respectfully report that, having taken and subscribed the oath required of a referee by section 1016 of the Code of Civil Procedure, I proceeded to take proofs, and from the evidence before me, which is hereto annexed and forms part of this report, I find the following :

I. That prior to the first day of October, 1887, the above named _____ engaged in business in the City of New York under the firm name of _____, and that the said assignor then resided in the City and County of New York.

II. That on said last mentioned date he executed and acknowledged an instrument in writing assigning all his property to the above named assignee in trust for the benefit of the creditors of said assignor. That the following preferences were created in and by said assignment, viz:

III. That the said assignee joined in the execution and acknowledgment of said assignment, and accepted said trust. That said assignment was acknowledged by said assignor and assignee, on October 1st, 1887, and was recorded in the office of the clerk of the City and County of New York, on the first day of October, 1887.

IV. That schedules of the assigned estate and of the liabilities of the assignors, duly verified by _____ on _____

, were filed in the office of the clerk of this court on the day of , 18 , showing the liabilities of the assignors to be \$ with \$ nominal assets, and \$ actual assets; and on the day of , 18 , Hon.

, one of the judges of this court, ordered the assignee to file a bond in the penalty of \$.

V. That on the day of , 18 , the said assignee presented to the Hon. , one of the judges of this court, his bond with , residing at

residing at , as sureties in the penal sum of , which bond was, on the said last named day, approved by the said last named judge, and was filed on said day in the office of the clerk of the court.

VI. That the said assignee having applied to this court upon petition, verified by him on the day of , 18 , for an order to advertise for creditors to present their claims, with the vouchers duly verified, an order was thereupon made on the day of , the Hon.

presiding, authorizing such advertisement to be made in the —, a newspaper published in the City of New York, and in —, a newspaper published in said city, once in each week for six successive weeks.

VII. That said advertisement was published as directed in each of said papers, commencing on the day of , 18 , and the following is a copy of such advertisement :

VII. That a copy of such advertisement, enclosed in a sealed envelope on which was endorsed a direction that if the same was not delivered in ten days it should be returned to , attorney at law, No. street, New York City, and with the proper postage prepaid thereon, was deposited in the post office in the city of New York, directed to each of creditors whose names appear on the books of the said assignor. That the following and no others of said notices have been returned by the postmaster, viz., those addressed to

IX. That the following persons have presented claims, duly verified, to the assignee, viz :

Name.	Address.	Amount.	Due.	For.

X. That on the day of , 18 , the said assignee presented to this court an account of his proceedings as assignee, verified by his oath thereto, made on the day of , 18 , stating his account as follows, viz.:

<i>Dr.</i> Inventory of Stock,	\$	
" Accounts,	\$	
Increase by		\$
<i>Cr.</i> Decrease,		
Expenses,		
Dividends paid to		
Balance,	\$	

XI. That upon petition of the said assignee, verified by him, on the day of , 18 , this court, by order made by Hon. , one of the judges thereof, directed a citation to issue to all persons interested, requiring them to appear in this court and attend the final settlement of the accounts of said assignee. That such citation was thereupon issued out of and under the seal of this court returnable on the day of , 18 . That by order of this court, duly made on the day of , 18 , the said citation was ordered to be served by publication in the —, a newspaper published in the City of New York, and in the —, a newspaper published in said city.

XII. That said citation was duly served in the following manner upon: by delivering a copy of said citation to each of said creditors, and leaving the same with him; and said citation was further served upon all the creditors of said assignor by publication as directed in the order aforesaid, and upon all creditors, whose residences could be ascertained by diligent enquiry, by mailing copies thereof as directed in said order, and that due and legal

service has been made of said citation, and the order of court relative thereto has been in all respects complied with.

XIII. That on the return of said citation the following parties and none other appeared in this court :

XIV. That the following objections to said account were filed by the following parties :

XV. That by order made by the Hon. _____, on the _____ day of _____, 18____, this court referred the said account to me to take and state the same, and to examine the parties and witnesses under oath in relation to said assignment and all matters connected therewith, and to take proof and report as to what persons are entitled to share in the distribution of said assigned estate, and in what priority and proportion.

XVI. That I issued a summons to attend the reference before me at my office, No _____ on the _____ day of _____, 18____, at _____ o'clock. All which notice was duly served on all the creditors who appeared as stated in paragraph XIII. of this report.

XVII. That the following named persons appeared before me on said reference in person :

And the following by counsel, viz.:

XVIII. That the said assignee, immediately after the approval and filing of this bond, entered upon his duties as such assignee; that he reduced to possession the assigned estate, consisting of

that he sold

realizing therefrom

\$

that he collected

\$

receiving from all sources a total of

\$

that he paid out and expended for necessary

expenses in the administration of the estate

as appears by said account the sum of

\$

That he has faithfully performed the duties of his said trust as assignee as aforesaid, and that he should be allowed the foregoing expenditures as necessary in the execution of said trust, and that his accounts should be stated, and I do hereby state them as follows, viz.:

Dr.

To Inventory of Stock,
 " " Accounts,
 " Increase (Schedule A),
 Total,

Cr.

By Decrease of Stock,
 Accounts,
 Expenses,
 Payments to

Leaving a balance in the hands of the assignee subject to his commission and the expenses of this accounting of \$

XIX. That the commissions of the assignee as computed by me amount to \$, which should be allowed to him, leaving in his hands the sum of \$, after deducting commissions, subject to the costs of this accounting.

_____,
 Referee.

XVIII.

DECREE ON REFEREE'S ACCOUNT.

At a Special Term of the Court of Common
 Pleas for the City and County of New
 York holden, &c.,

Present, Hon.

Judge.

In the matter of the final
 accounting, of &c. }

A general assignment for the benefit of creditors having been made by A. B. to the above named assignee, on the day of , 1888, which was on the same day recorded in the office of the clerk of the city and county of New York, and said assignee having accepted the trust created by said assignment and given the bond required by law which was duly approved; and having advertised for creditors to present their claims in

accordance with an order therefor, and the time for the presentation of such claims having expired, and said assignee having filed his account, and a citation to persons interested in said estate having been issued to attend the settlement of the account so filed; and upon the return day of said citation, it having been referred to _____,

Esq., counsellor-at-law, to take and state the account, and to examine the parties and witnesses under oath in relation to said assignment and all matters connected therewith, and to take proof and report as to what persons are entitled to share in the distribution of said assigned estate and in what priority and proportion; and said referee having made and filed his report on the _____ day of _____, 1885, and due notice of said filing having been given,

Now, upon all the papers and proceedings herein, the report aforesaid and the testimony and vouchers filed therewith,

IT IS ORDERED, ADJUDGED AND DECREED,

I. That said report be and it hereby is confirmed in all respects and the account of said assignee audited and allowed as stated therein.

II. That out of the funds in his hands belonging to said trust estate, the said assignee retain the sum of _____ dollars for his lawful commission as assignee; that he pay to _____ attorney for said assignee, the sum of _____ dollars for his fees and costs herein, and the further sum of _____ dollars to _____, Esq., the referee above named for his fees herein, and out of the residue of the moneys in his possession, in his capacity aforesaid, the assignee is directed to pay the following named creditors, who were preferred in said assignment, the following amounts respectively set against their names in full; that out of the residue of said moneys remaining in his hands after the payments aforesaid, said assignee is directed to pay the following named creditors the amounts set against their respective names:

Creditor's name.	Amount.
------------------	---------

III. That the assignee take proper vouchers for the various payments aforesaid; and if, after reasonable diligence any of the creditors aforesaid cannot be found or refuse to accept the sums to which they are entitled as above set forth, the assignee is

hereby directed to deposit the same with the Union Trust Company to the credit of such person, and

IT IS ALSO ORDERED, ADJUDGED AND DECREED,

That upon compliance with the provisions of this order and upon presentation of the proper vouchers and proofs thereof, the assignee be entitled, without further notice, to an order relieving him of all liability as such assignee, and releasing the sureties, upon the bond of said assignee, from all liability thereunder to all creditors who have appeared, or who have been duly cited to appear, upon such accounting, and to all creditors who have not presented their claims after due notice and advertisement.

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